NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

DAVID L. SLATE, OF CALIFORNIA, TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

AND

BETTY H. BRAKE, OF OKLAHOMA, TO BE DEPUTY DIRECTOR, ACTION AGENCY

DECEMBER 8, 1982

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE

17-038 O WASHINGTON : 1982

S54-17

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NOMINATIONS

WEDNESDAY, DECEMBER 8, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m., in room 4232, Dirksen Senate Office Building, Senator Don Nickles (acting chairman of the committee) presiding.

Present: Senator Nickles.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. Good morning.

I am pleased to have the opportunity to chair this morning's hearing concerning the nominations of David Slate to be General Counsel of the Equal Employment Opportunity Commission and also Betty Brake to be Deputy Director of ACTION. Both candidates are highly qualified for the positions to which they have been nominated, and I believe they will contribute greatly to the work of their respective agencies.

The first nominee the committee will consider is David Slate. Mr. Slate is currently a partner in the San Francisco law firm of Morrison & Foerster. Over the past 8 years, he has specialized in equal employment opportunity law, both as an adviser and litigator. Furthermore, Mr. Slate has experience in managing teams of attorneys in large EEO cases, as well as having had private sector management responsibilities.

I believe Mr. Slate is an excellent choice as General Counsel for the EEOC.

I urge the committee to act expeditiously so that the Senate can swiftly confirm him to that position. I hope that can be during this lameduck session.

Mr. Slate, welcome to the committee. As you are aware, I am sure, Senator Hatch has had some physical problems which he is recuperating from and is just now back in shape, so he is unavoidably detained. He has a statement for the record which we will include at this time.

I would also like to include a statement from Senator Hayakawa, also unavoidably detained, which will be included in the record at this time.

[Statements of Senators Hatch and Hayakawa follow:]

PREPARED STATEMENT OF SENATOR HATCH

The CHAIRMAN. I am pleased that we are able to convene today on the President's nomination of David L. Slate of California to be the General Counsel of the Equal Employment Opportunity Commission.

As I have said in the past, it is becoming quite clear that the new leadership at the Commission, under the guidance of its Chairman, Clarence Thomas, has begun to take the necessary steps to insure that the agency will, in the future, be a model of excellence. Anyone who is committed to the principles of title VII and the other Federal statutes prohibiting discrimination understands that an efficient well-managed Commission is a prerequisite to equitable and effective Federal enforcement. The problems that have plagued the agency in the past were not limited to misjudgments of policy or overreaching of legal interpretations, but also stemmed from an unwillingness to address even the most rudimentary administrative functions, such as balancing the agency's financial records or being able to locate complaints filed by the Commission itself.

Despite the numerous allegations concerning this administration's commitment to equal employment opportunity that one sees constantly in the press, the Commissioners that have been nominated by President Reagan and confirmed by the Senate represent some of the best appointments to the EEOC in its history.

The nomination of Mr. Slate is another indication of the administration's commitment to the Commission and to the progress that agency has made over the last 6 months.

There are serious problems, however, confronting the Office of General Counsel. According to the recent reorganization of the Commission, the General Counsel is responsible for, among other things, the development of the agency's litigation of all systemic cases.

All of these areas have been the subject of much debate in the past and I am sure they will be so in the future. For example, the agency's litigation strategy over the last several years has generated several disturbing questions as to the agency's handling of national origin complaints. Of the 250 complaints issued by the Commission in fiscal year 1982, only 3, or less than 1 percent, involved national origin. A similar absence of national origin cases can also be found among the systemic cases now before the Commission. The systemic office itself has not been as productive as one would expect given the size of its staff and budget. Moreover, there are serious questions about the status of cases that have been sitting in the field offices without resolution for more than 1 year.

I am pleased that the Acting General Counsel, Michael Martinez, has made some positive steps during his brief tenure of the Commission. I understand that he has been instrumental in the development of a computerized case tracking system that will enable the General Counsel's Office to monitor accurately its caseload. He has also made several managerial improvements in the Office that should enhance its efficiency and effectiveness.

Mr. Slate is without question well qualified to be the General Counsel of the Equal Employment Opportunity Commission. A partner in the respected San Francisco law firm of Morrison & Foerster, he has practiced for more than 8 years in the field of equal employment opportunity law. He has also more than 6 years of experience as a manager with California Almond Orchards, a division of Tenneco West, Inc. Mr. Slate thus brings invaluable firsthand experience to his nominated position. I am sure that the confidence which the President has placed in Mr. Slate is well founded and the Nation will be well served by his tenure at the Commission.

PREPARED STATEMENT OF SENATOR HAYAKAWA

Senator HAYAKAWA. Mr. Chairman, thank you for the opportunity to present to you and members of the Senate Labor Committee Mr. David L. Slate of San Rafael, Calif., the President's nominee for the post of General Counsel of the Equal Employment Opportunity Commission [EEOC].

When considering the experience and character traits that a qualified nominee must possess, we must carefully examine the purposes for which the Commission was established. Foremost is the goal to eliminate discrimination based on race, color, religion, sex, national origin, or age in hiring, promoting, firing, wages, and all other conditions of employment. I want to emphasize how impressed we must be with the gravity and far-reaching effects of the decisions made and the enforcement procedures established by this Commission.

Mr. Slate brings to this important responsibility a thorough background in both traditional labor and equal employment opportunity law as a partner in the San Francisco law firm of Morrison & Foerster. Furthermore, and most importantly, he

brings to this position a professional reputation of competence, strict adherence to ethics, and a high degreee of integrity.

In addition to his extensive legal experience, Mr. Slate developed the approach and conducted a number of major EEO preventive law surveys designed to assist clients in complying with title VII, the Age Discrimination Act, the Equal Pay Act, and other Federal and State antidiscrimination laws. Mr. Slate prepared and conducted training seminars for clients on EEO compliance. In conclusion, Mr. Chairman, I am proud to recommend Mr. David Slate to the committee.

Senator NICKLES. Mr. Slate, please proceed with whatever comments you might happen to have.

STATEMENT OF DAVID L. SLATE, NOMINATED TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. SLATE. Mr. Chairman, I am pleased and honored by the President's decision to nominate me to be the General Counsel of the Equal Employment Opportunity Commission. It is a privilege to have this opportunity to appear before this committee to seek your approval, and I express my deep gratitude for your expeditious consideration of my nomination.

I also wish Senator Hatch a speedy and prompt recovery.

The EEOC is the primary enforcement agency for the Government's statutory prohibitions against discrimination in employment and is responsible for enforcing title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, and section 501 of the Rehabilitation Act of 1973.

The primary responsibility of the General Counsel is to assure that litigation conducted by the EEOC pursuant to these laws is prosecuted vigorously, professionally, and effectively. If confirmed, I pledge to carry out this important responsibility.

The major part of my professional career has been devoted to practice in the field of equal employment opportunity law. I have been long committed to the principle of nondiscrimination in employment and to my duty as an attorney to advise my clients of their obligation to comply with the law.

My professional experience derives not only from litigation on behalf of clients but from extensive counseling designed to assist them in assuring that their policies and practices comply with the letter and spirit of these laws.

The breadth of experience I have gained during my professional career has given me an understanding of the challenges which employers face in implementing employment policies and practices that will meet rigorous standards of compliance. This experience has also complemented my personal commitment by heightening my awareness and sensitivity to the difficulties minorities and women have had in becoming an integral part of the economic mainstream.

Much progress has been made toward achieving our national goal of equal employment opportunity for all persons. Nevertheless, I recognize that we are still a distance from attaining that goal. I can assure this committee that if I am confirmed, I will represent the EEOC as vigorously as I have represented any client.

I have had the opportunity to meet with Chairman Thomas and the other Commissioners of the EEOC, and have been pleased to learn of their strong commitment to work with and support the

Office of the General Counsel in a collective effort to achieve success in the Commission's leadership role in the fight to eradicate unlawful discrimination in the workplace.

If confirmed, I intend to work closely with Chairman Thomas and the other Commissioners in order to achieve the objectives of the Commission and the equal employment laws which it is charged with enforcing.

The task of managing some 300 lawyers, most of whom are assigned among EEOC's 22 district offices spanning the entire country, is an awesome challenge. In an organization this large and geographically diverse, effective management requires the development of a high level of morale, together with a strong sense and clarity of purpose. This can best be accomplished with open communication between staff attorneys and the General Counsel and with adequate support from the Office of the General Counsel.

I approach this challenge with respect for the dedication and effort put forth by the Commission's legal staff and, if confirmed, pledge to work very hard to provide the direction and support needed to carry out the General Counsel's litigation responsibilities more effectively and efficiently.

I have had an opportunity recently to meet with a few of the lawyers at EEOC headquarters and have been uniformly impressed with their dedication and level of professionalism. Nevertheless, there is always room for improvement. If confirmed, I intend to work toward improving the level of professionalism among the Commission's lawyers in order to make that a hallmark of the agency. At the same time, I intend to provide, through the Office of the General Counsel, any guidance, support, and training which is needed to achieve that result.

The number of cases filed should not be the only method by which the effectiveness of the EEOC's litigation efforts is measured. This is because it is relatively simple to file cases but vastly more difficult to prosecute them to successful conclusion, whether through meaningful settlement, trial, or appeal.

It must be recognized that the legal staff and monetary resources available to the Commission are not inexhaustible and, therefore, must be allocated judiciously. Thus, in allocating its staff and resources, the Commission must balance its litigation efforts, not only as between cases involving one individual or a number of individuals, but also to assure the effective and vigorous enforcement of all the statutes it is charged with enforcing.

If confirmed, I intend to work with the Commissioners toward the development of a comprehensive strategy for the development and conduct of litigation that will result in a balanced approach to enforcing the laws for which the EEOC is responsible, and the efficient and effective utilization of available resources.

Title VII and the other statutes enforced by the EEOC contemplate substantial litigation by the private plaintiffs bar and by private enforcement groups, in addition to that conducted by the Commission. In carrying out their enforcement obligations, the Commissioners and the General Counsel alike serve the public interest.

In this regard, I believe it is important for the General Counsel to encourage a regular dialog with all segments of the public that have an interest in the effective enforcement of these laws and in

promoting equal employment opportunity. If confirmed, I intend to encourage and participate in this liaison function.

Regardless of the extent to which improved management and direction results in more effective litigation under the leadership of any one General Counsel, long-term improvements dictate that litigation policies and practices be institutionalized. In order to accomplish this result, it is essential that changes and improvements be the result of team effort and not simply directives from the Office of the General Counsel. Effective team building will be one of my priorities as General Counsel, if I am confirmed.

In summary, the major challenges to this office are the strengthening of the spirit of teamwork and cooperation among the General Counsel's staff, the improvement of the level of professionalism, the implementation of effective systems for case management, and the development of a well-informed litigation strategy that will adequately protect the rights of the beneficiaries of the equal employment opportunity laws. I welcome the opportunity, if confirmed, to address these challenges.

I look forward to your support and will be pleased to answer any questions you may have at this time.

[The prepared statement and biographical sketch of Mr. Slate follows:]

STATEMENT OF DAVID L. SLATE
NOMINATED TO BE GENERAL COUNSEL,
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM PLEASED AND HONORED BY THE PRESIDENT'S DECISION TO NOMINATE ME TO BE THE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. IT IS A PRIVILEGE TO HAVE THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO SEEK YOUR APPROVAL, AND EXPRESS MY DEEP GRATITUDE FOR YOUR EXPEDITIOUS CONSIDERATION OF MY NOMINATION.

THE EEOC IS THE PRIMARY ENFORCEMENT AGENCY FOR THE GOVERNMENT'S STATUTORY PROHIBITIONS AGAINST DISCRIMINATION IN EMPLOYMENT, AND IS RESPONSIBLE FOR ENFORCING TITLE VII OF THE CIVIL RIGHTS ACT, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE EQUAL PAY ACT, AND SECTION 501 OF THE REHABILITATION ACT OF 1973. THE PRIMARY RESPONSIBILITY OF THE GENERAL COUNSEL IS TO ASSURE THAT LITIGATION CONDUCTED BY THE EEOC PURSUANT TO THESE LAWS IS PROSECUTED VIGOROUSLY, PROFESSIONALLY AND EFFECTIVELY. IF CONFIRMED, I PLEDGE TO CARRY OUT THIS IMPORTANT RESPONSIBILITY.

THE MAJOR PART OF MY PROFESSIONAL CAREER HAS BEEN DEVOTED TO PRACTICE IN THE FIELD OF EQUAL EMPLOYMENT

OPPORTUNITY LAW. I HAVE LONG BEEN COMMITTED TO THE PRINCIPLE OF NON-DISCRIMINATION IN EMPLOYMENT AND TO MY DUTY AS AN ATTORNEY TO ADVISE MY CLIENTS OF THEIR OBLIGATION TO COMPLY WITH THE LAW. MY PROFESSIONAL EXPERIENCE DERIVES NOT ONLY FROM LITIGATION ON BEHALF OF CLIENTS, BUT FROM EXTENSIVE COUNSELLING DESIGNED TO ASSIST THEM IN ASSURING THAT THEIR POLICIES AND PRACTICES COMPLY WITH THE LETTER AND SPIRIT OF THESE LAWS. THE BREADTH OF EXPERIENCE I HAVE GAINED DURING MY PROFESSIONAL CAREER HAS GIVEN ME AN UNDERSTANDING OF THE CHALLENGES WHICH EMPLOYERS FACE IN IMPLEMENTING EMPLOYMENT POLICIES AND PRACTICES THAT WILL MEET RIGOROUS STANDARDS OF COMPLIANCE. THIS EXPERIENCE HAS ALSO COMPLEMENTED MY PERSONAL COMMITMENT BY HEIGHTENING MY AWARENESS AND SENSITIVITY TO THE DIFFICULTIES MINORITIES AND WOMEN HAVE HAD IN BECOMING AN INTEGRAL PART OF THE ECONOMIC MAINSTREAM. MUCH PROGRESS HAS BEEN MADE TOWARD ACHIEVING OUR NATIONAL GOAL OF EQUAL EMPLOYMENT OPPORTUNITY FOR ALL PERSONS. NEVERTHELESS, I RECOGNIZE THAT WE ARE STILL A DISTANCE AWAY FROM ATTAINING THAT GOAL. I CAN ASSURE THIS COMMITTEE THAT IF I AM CONFIRMED, I WILL REPRESENT THE EEOC AS VIGOROUSLY AS I HAVE REPRESENTED ANY CLIENT.

I HAVE HAD THE OPPORTUNITY TO MEET WITH CHAIRMAN THOMAS AND THE OTHER COMMISSIONERS OF THE EEOC, AND HAVE BEEN PLEASED TO LEARN OF THEIR STRONG COMMITMENT TO WORK WITH AND SUPPORT THE OFFICE OF THE GENERAL COUNSEL IN A

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COLLECTIVE EFFORT TO ACHIEVE SUCCESS IN THE COMMISSION'S LEADERSHIP ROLE IN THE FIGHT TO ERADICATE UNLAWFUL DISCRIMINATION IN THE WORKPLACE. IF CONFIRMED, I INTEND TO WORK CLOSELY WITH CHAIRMAN THOMAS AND THE OTHER COMMISSIONERS IN ORDER TO ACHIEVE THE OBJECTIVES OF THE COMMISSION AND THE EQUAL EMPLOYMENT LAWS WHICH IT IS CHARGED WITH ENFORCING.

THE TASK OF MANAGING SOME 300 LAWYERS, MOST OF WHOM ARE ASSIGNED AMONG EEOC'S 22 DISTRICT OFFICES SPANNING THE ENTIRE COUNTRY, IS AN AWESOME CHALLENGE. IN AN ORGANIZATION THIS LARGE AND GEOGRAPHICALLY DIVERSE, EFFECTIVE MANAGEMENT REQUIRES THE DEVELOPMENT OF A HIGH LEVEL OF MORALE, TOGETHER WITH A STRONG SENSE AND CLARITY OF PURPOSE. THIS CAN BEST BE ACCOMPLISHED WITH OPEN COMMUNICATION BETWEEN STAFF ATTORNEYS AND THE GENERAL COUNSEL, AND WITH ADEQUATE SUPPORT FROM THE OFFICE OF GENERAL COUNSEL. I APPROACH THIS CHALLENGE WITH RESPECT FOR THE DEDICATION AND EFFORT PUT FORTH BY THE COMMISSION'S LEGAL STAFF, AND, IF CONFIRMED, PLEDGE TO WORK VERY HARD TO PROVIDE THE DIRECTION AND SUPPORT NEEDED TO CARRY OUT THE GENERAL COUNSEL'S LITIGATION RESPONSIBILITIES MORE EFFECTIVELY AND EFFICIENTLY.

I HAVE HAD AN OPPORTUNITY RECENTLY TO MEET WITH A FEW OF THE LAWYERS AT EEOC HEADQUARTERS, AND HAVE BEEN UNIFORMLY IMPRESSED WITH THEIR DEDICATION AND LEVEL OF

PROFESSIONALISM. NEVERTHELESS, THERE IS ALWAYS ROOM FOR IMPROVEMENT. IF CONFIRMED, I INTEND TO WORK TOWARD IMPROVING THE LEVEL OF PROFESSIONALISM AMONG THE COMMISSION'S LAWYERS, IN ORDER TO MAKE THAT A HALLMARK OF THE AGENCY. AT THE SAME TIME, I INTEND TO PROVIDE, THROUGH THE OFFICE OF THE GENERAL COUNSEL, ANY GUIDANCE, SUPPORT AND TRAINING WHICH IS NEEDED TO ACHIEVE THAT RESULT.

THE NUMBER OF CASES FILED SHOULD NOT BE THE ONLY METHOD BY WHICH THE EFFECTIVENESS OF THE EEOC'S LITIGATION EFFORTS IS MEASURED. THIS IS BECAUSE IT IS RELATIVELY SIMPLE TO FILE CASES, BUT VASTLY MORE DIFFICULT TO PROSECUTE THEM TO SUCCESSFUL CONCLUSION, WHETHER THROUGH MEANINGFUL SETTLEMENT OR TRIAL OR APPEAL. IT MUST BE RECOGNIZED THAT THE LEGAL STAFF AND MONETARY RESOURCES AVAILABLE TO THE COMMISSION ARE NOT INEXHAUSTIBLE AND THEREFORE MUST BE ALLOCATED JUDICIOUSLY. THUS, IN ALLOCATING ITS LIMITED STAFF AND RESOURCES, THE COMMISSION MUST BALANCE ITS LITIGATION EFFORTS, NOT ONLY AS BETWEEN CASES INVOLVING ONE INDIVIDUAL OR A NUMBER OF INDIVIDUALS, BUT ALSO TO ASSURE THE EFFECTIVE AND VIGOROUS ENFORCEMENT OF ALL THE STATUTES IT IS CHARGED WITH ENFORCING. IF CONFIRMED, I INTEND TO WORK WITH THE COMMISSIONERS TOWARD THE DEVELOPMENT OF A COMPREHENSIVE STRATEGY FOR THE DEVELOPMENT AND CONDUCT OF LITIGATION THAT WILL RESULT IN A BALANCED APPROACH TO ENFORCING THE LAWS FOR WHICH THE EEOC IS RESPONSIBLE, AND THE EFFICIENT AND EFFECTIVE UTILIZATION OF AVAILABLE RESOURCES.

TITLE VII AND THE OTHER STATUTES ENFORCED BY THE EEOC CONTEMPLATE SUBSTANTIAL LITIGATION BY THE PRIVATE PLAINTIFFS BAR AND BY PRIVATE ENFORCEMENT GROUPS, IN ADDITION TO THAT CONDUCTED BY THE COMMISSION. IN CARRYING OUT THEIR ENFORCEMENT OBLIGATIONS, THE COMMISSION AND THE GENERAL COUNSEL ALIKE SERVE THE PUBLIC INTEREST. IN THIS REGARD, I BELIEVE IT IS IMPORTANT FOR THE GENERAL COUNSEL TO ENCOURAGE A REGULAR DIALOGUE WITH ALL SEGMENTS OF THE PUBLIC THAT HAVE AN INTEREST IN THE EFFECTIVE ENFORCEMENT OF THESE LAWS AND IN PROMOTING EQUAL EMPLOYMENT OPPORTUNITY. IF CONFIRMED, I INTEND TO ENCOURAGE AND PARTICIPATE IN THIS LIAISON FUNCTION.

REGARDLESS OF THE EXTENT TO WHICH IMPROVED MANAGEMENT AND DIRECTION RESULTS IN MORE EFFECTIVE LITIGATION UNDER THE LEADERSHIP OF ANY ONE GENERAL COUNSEL, LONG-TERM IMPROVEMENTS DICTATE THAT LITIGATION POLICIES AND PRACTICES BE INSTITUTIONALIZED. IN ORDER TO ACCOMPLISH THIS RESULT, IT IS ESSENTIAL THAT CHANGES AND IMPROVEMENTS BE THE RESULT OF TEAM EFFORT AND NOT SIMPLY DIRECTIVES FROM THE OFFICE OF THE GENERAL COUNSEL. EFFECTIVE TEAM BUILDING WILL BE ONE OF MY PRIORITIES AS GENERAL COUNSEL, IF I AM CONFIRMED.

IN SUMMARY, THE MAJOR CHALLENGES TO THIS OFFICE ARE THE STRENGTHENING OF THE SPIRIT OF TEAMWORK AND COOPERATION AMONG THE GENERAL COUNSEL'S STAFF, THE IMPROVEMENT OF THE LEVEL OF PROFESSIONALISM, THE IMPLEMENTATION OF EFFECTIVE SYSTEMS FOR CASE MANAGEMENT AND THE DEVELOPMENT OF A WELL INFORMED LITIGATION STRATEGY THAT WILL ADEQUATELY PROTECT THE RIGHTS OF THE BENEFICIARIES OF THE EQUAL EMPLOYMENT OPPORTUNITY LAWS. I WELCOME THE OPPORTUNITY, IF CONFIRMED, TO ADDRESS THESE CHALLENGES.

I LOOK FORWARD TO YOUR SUPPORT, AND WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE AT THIS TIME.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: SLATE (LAST) DAVID (FIRST) LOUIS (OTHER)

Position to which nominated: General Counsel, Equal Employment Opportunity Commission Date of nomination:

Date of birth: 13 (DAY) Jan. (MONTH) 1942 (YEAR) Place of birth: Paso Robles, California

Marital status: Married Full name of spouse: Joan Carol Slate

Name and ages of children: Stephanie Ann Slate (20)
Susan Lynn Slate (18)
Michael Stuart Slate (14)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of California, Hastings College of the Law	8/71-5/74	J.D.	May, 1974
San Francisco State University	9/60-6/65	B.A.	June, 1965
Burlingame H.S.	1/57-6/60	H.S.Diploma	June, 1960
Paso Robles H.S.	9/56-1/57	--	--

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Winner, David E. Snodgrass Moot Court Competition, Hastings College of the Law, 1973

Member (Chairman, Grading Committee), Moot Court Board, Hastings College of the Law, 1973-74

Dean's Honor List, San Francisco State University

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Bar Association	None	Jan.1975-Present
State Bar of California	None	Dec.1974-Present
Bar Assn. of San Francisco	None	Jan.1975-Present
San Rafael Pop Warner Football Club	Director	Sept.1978-Nov.1982
California Boot Stores, Inc.	Director	Nov.1981-Nov.1982

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1974-Present: Morrison & Foerster, Attorneys, San Francisco, California. Partner since October, 1980. Specialized in labor and employment law.

1971-1974: St. Sure, Moore, Hoyt & Sizoo, Attorneys, Oakland, California. Part-time law clerk while attending law school.

1965-1971: Tenneco West, Inc., Bakersfield, California. Marketing Management, California Almond Orchards Division, Paso Robles, California (1965-1969) and Bakersfield, California (1969-1971).

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Vol 2, Working With Legal Assistants, Chapter 25, "Labor and Employment Law Practice," American Bar Association, Section of Economics of Law Practice (1981).

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Contributed to Pete Wilson Campaign, 1982

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No plans at this time.

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

I do not believe any of my investments or other financial relationships constitute a potential conflict of interest. Apart from small, private real estate investments, on a partnership basis, my only holdings consist of 20 shares of common stock in Tenneco, Inc. and small minority stock holdings in two privately-held California corporations, Marin Mortgage, Inc. and California Boot Stores, Inc.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

See Attachment A.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See Attachment B.

Attachment A

During the last five years I have represented or advised a number of clients with respect to administrative charges pending before the EEOC. Most of those charges have been administratively closed by EEOC. To the best of my knowledge, I am not presently involved in advising or representing any client with respect to any matter which may constitute a potential conflict of interest. My firm is presently representing three clients in matters in which the EEOC is directly involved. Those clients are: Kahn & Nippert Company, Lockheed Missiles & Space Company, Inc., and Pension Benefit Guaranty Corp. Although I have not worked on these matters or personally represented or advised any of these clients, on these matters or otherwise, I will take appropriate steps to make certain that I have no involvement with these matters if I am confirmed by the Senate. Although I cannot, of course, disclose any client confidences or privileged communications, I will be pleased to discuss my representation in more detail with members of the committee or with their staff, if such discussion is desired.

Attachment B

I will recuse myself from any personal involvement in any matter now pending before the EEOC, or any matter which may arise during my term of office, where my involvement might constitute a potential conflict of interest because of my prior rendition of legal advice to any party. The responsibility for handling any such matters will be delegated to the Deputy General Counsel or to some other member of my staff. Of course, I will defer to the designated agency ethics official at EEOC and to the Office of Government Ethics, but if these officials advise me to do so, I will also recuse myself from involvement in any matter in which the law firm of Morrison & Foerster is acting as the legal representative of any party. In view of the fact that I will sever completely my relationship with Morrison & Foerster if confirmed by the Senate, this latter step probably is not required, but may be appropriate in order to avoid even the appearance of any conflict.

Senator NICKLES. Thank you, Mr. Slate.

I appreciate your comments.

A couple of questions from myself. What do you believe the role of the General Counsel to be in formulating the general policy of EEOC?

Mr. SLATE. Well, the Commission itself is the body charged with formulating policy for the Commission. Nevertheless, the General Counsel should inform the Commissioners in an advisory capacity of the issues and trends developing through litigation.

In exercising my professional judgment in the litigation area, I will, of course, be guided by the overall policy set by the Commission.

Senator NICKLES. Do you have any plan to reorganize the Office of General Counsel?

Mr. SLATE. No, Senator, I do not. I know that it is frequently believed that people coming in should reorganize what is there. I am not at all sure that reorganization in the General Counsel's area is needed to implement the kinds of changes and improvements that I would like to see accomplished. If it develops at a later time that reorganization would assist in that effort, then I would consider a reorganization, but I think that it is more important to look at the quality of work being done, the morale of the staff lawyers, than it is to determine what organizational box they are placed into.

Senator NICKLES. You mentioned, I think, the fact that you had 300 attorneys scattered around the country. How many do you have in Washington, D.C.?

Mr. SLATE. I am not sure of the exact breakdown of the numbers, Senator. My understanding is that in the Office of the General Counsel, there are approximately 40 or 50 lawyers in Washington, and the balance are in the field.

Senator NICKLES. Do you feel like you have adequate resources to carry out the functions of General Counsel?

Mr. SLATE. I am not really sure what the specific budget allocation is at EEOC to the Office of the General Counsel. In preliminary discussions that I have had with lawyers at the agency, I have some concern about the agency's resources to effectively litigate cases, particularly when there is substantial pressure on the EEOC to increase its caseload.

Senator NICKLES. Do you have an idea of how much of a backlog there is now in pending cases?

Mr. SLATE. There are, I believe, pending about 700 cases. What the relative age of those cases is, I am not sure, Senator.

Senator NICKLES. Would you find out what the relative age is in number of months in those cases, so we will find out if some of these cases have been dragging on for a year, as I believe probably several of them have been. I would be interested in the average and also a little bit of a scale, how many of them have been there for, say, 2 years, and how many of them are fresh, to get a better idea of how the Commission and how your Office has been doing as far as expediting and settling and getting some of those cases behind it.

Mr. SLATE. I will be happy to look into that. I know that the staff is in the process of compiling that type of information already, and I will be happy to take a look at that and report back.

Senator NICKLES. I appreciate that.

A couple of other questions. What do you believe to be the proper use of affirmative types of remedies such as goals and timetables or quotas in the resolution of claims arising under title VII and other statutes enforced by the Commission?

Mr. SLATE. I think that any time a goal is going to be used as a remedy that may impact on the rights of others, it has to be used very judiciously. The use of those types of remedies has to be based upon the specific facts and circumstances of a given case.

I do not believe that title VII was designed to establish absolute preferences for one group who have not been victims of discrimination at the expense of another group who have not been the perpetrators. But, backing away from that absolute notion, I think there are cases where remedial relief that is goal-oriented and establishes a mechanism for measuring the compliance with a consent decree or adjudicated decree may well be appropriate. Again, it has to depend on the facts of the particular case.

Senator NICKLES. What steps do you believe that the General Counsel can or should take to insure that cases involving national origin are not arbitrarily excluded from the Commission's caseload?

Mr. SLATE. I think that in the overall effort to evaluate what cases are pending, the nature of the cases that are pending, we have an obligation to enforce all aspects of the law. I have heard recently there is some substantial concern from the Hispanic community that that has not been the case under title VII, and I intend to look into that.

Senator NICKLES. All right.

Mr. Slate, I have no further questions. It is my understanding that Senator Hatch and possibly Senator Heinz will have additional questions, and there may be additional questions by other members of this committee, so we will keep the hearing record open until 5 p.m. today to receive those questions, and we would appreciate your prompt response to those.

Mr. SLATE. I will be happy to do that, Senator.

[Material supplied for the record follows:]

December 9, 1982

Honorable Orrin G. Hatch
Chairman
Senate Labor and Human Resources
Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

Thank you for your expeditious treatment of my nomination as General Counsel of the Equal Employment Opportunity Commission.

Enclosed you will find my responses to your written questions, together with a copy of my responses to Senator Heinz's questions.

Very truly yours,

David L. Slate

DLS/spy
Enclosures

QUESTIONS FOR DAVID L. SLATE, SUBMITTED BY SENATOR ORRIN G. HATCH

1.Q What do you perceive to be the role of the General Counsel at the Equal Employment Opportunity Commission, following the recent reorganization of that agency?

A The primary responsibility of the General Counsel is to assure that enforcement litigation conducted by the EEOC, pursuant to the statutes it is charged with enforcing, is prosecuted vigorously, professionally and effectively. The General Counsel should also inform the Commission, in an advisory capacity, of the issues and trends developing through litigation in order to assist the Commission in its responsibility to formulate policy.

2.Q What do you believe to be the proper use of affirmative types of remedies, such as goals and timetables or quotas, in the resolution of claims arising under Title VII and the other statutes enforced by the Commission?

A I believe that the purpose and intent of Title VII is to remove barriers to equal employment opportunity and to make whole the victims of discrimination, where it has been established that discrimination has occurred. Sometimes this involves large groups of people, where class-type relief is appropriate. By the same token, I do not believe that Title VII was intended to provide an absolute preference to someone who was not the victim of discrimination. Goals or timetables may be appropriate in certain situations to provide an initial measurement of a defendant's good faith effort to comply with an order which requires the provision of equal employment opportunity.

3.Q What steps do you believe that the General Counsel can take to ensure that cases involving national origin are not arbitrarily excluded from the Commission's caseload?

A The General Counsel's responsibility for litigation does not begin until after charge intake, investigation and conciliation. Thereafter, I plan to assure that cases on behalf of all protected groups are evaluated on an equal basis, with an emphasis on a balance of cases and a realistic case assessment. This message will be communicated to all attorneys who are responsible for enforcement litigation. Furthermore, establishment of a system for monitoring of cases, including those rejected for litigation, by issues and basis, will be an essential element in implementation of this policy.

4.Q In the past, the Commission has intervened in cases it feels are of great importance in the development of equal employment opportunity law or will have an impact on a significant number of plaintiffs. Questions have been raised about whether intervention is the most economical and effective method for influencing the development of the law, whether the filing of amicus curiae briefs might enable the Commission to participate in more cases without any significant difference in the agency's role in the case. Do you feel that the Commission should intervene in as many cases as it has in the past or that consideration should be given to alternative means of participation?

A I am not presently aware of the balance between interventions and amicus participation by the Commission. In view of the limited litigation resources available, it is desirable to explore alternatives to direct suit by the Commission as a means of ensuring that the public interest is represented in Title VII enforcement. In circumstances where such limited participation is appropriate, choosing intervention or amicus participation will depend on the objectives of the Commission in the particular case. Maximization of resources and protection of public interest and Commission policy are both important concerns in this regard. Intervention simply to provide financial resources to a private plaintiff without any other participation in the case is not, in my view, an appropriate use of the Commission's resources. Whether Commission participation is by intervention or as amicus curiae, an important part of a comprehensive litigation strategy should be to provide substantive and technical assistance to private litigants when doing so will advance the public interest and Commission policy.

5.Q What steps do you believe can be taken to improve the number and quality of cases being developed by the Office of Systemic Programs?

and

6.Q For the past several years, considerable concern has been expressed over the Commission's abuse of its authority to issue Commissioner's charges. Congress granted such authority in 1964 to permit EEOC to initiate an investigation where an individual is unwilling to file a charge for fear of retaliation by an employer. In the past, this authority has been used to launch large scale "pattern or practice" suits against employers based solely upon statistics which purportedly show disparities in hiring, promotion, or other employment practices affecting protected groups. The charges have tended to be broad, vague allegations

of discrimination which form the basis of costly, burdensome investigations and discovery into the entire range of an employer's business practices over the course of several years. What steps do you believe can be taken to insure that the EEOC's charges and investigations will be more focused?

A My response to both Questions 5 and 6 is the same. The Office of the General Counsel is not responsible for systemic investigation or Commissioner's charges, but it is responsible for the evaluation of such cases submitted for litigation consideration. In this evaluation, I will apply rigorous, realistic standards to assure that cases are filed which are manageable and provable. I also plan to increase training focused on complex case litigation. These litigation standards and training efforts will be available to the Commission both on a consulting basis, and through the Commission's new centralized training program. Over time this should enhance the Commission's efforts in instituting, investigating and evaluating both "systemic" cases and Commission charges.

7.Q As held by several courts of appeals, most recently the Eighth Circuit in Shell Oil Co. v. EEOC, Section 706(b) of Title VII specifies the grounds on which a Commissioner's charge shall issue and the specific facts that must be alleged in the charge. What standards do you believe the Commission should follow with regard to the issuance of Commissioner charges? If those standards differ from the ones delineated in the Shell case, would you please explain the legal basis for this difference and the standards you will be following in the Eighth Circuit?

A I have been advised that the Commission has not yet determined whether to seek review of the decision of the Eighth Circuit in Shell Oil Co. v. EEOC. Consequently, I do not believe it would be appropriate for me to comment on this case at this time. I have provided my comments to questions regarding Commissioners charges in other contexts in my response to Questions 5 and 6, above.

8.Q Based on your understanding of Hazelwood School District v. United States, 433 U.S. 299 (1977), Teamsters v. United States, 431 U.S. 340 (1974), New York Transit Authority v. Beazer, 440 U.S. 568 (1979), and related cases, what will your advice to the Commission be as to the role that statistics regarding an employer's workforce, the surrounding civilian workforce and the local population should play in deciding whether to issue a Commissioner's charge or a complaint?

A My application of statistical principles would normally come during the evaluation of a case for litigation and during the litigation itself. I believe that statistics can be important, but statistics rarely tell the whole story. I believe there is room for improvement in the statistical expertise of the attorneys at EEOC, and if confirmed, I plan to work on developing a greater level of expertise. As to the substantive part of your question, general population statistics are normally not probative of discrimination, but more refined comparisons of the relevant labor force can be probative. Data on applicant flow is also relevant in this regard. Where statistics are an important part of the evidence and where statistical differentials do not meet the Hazelwood standard, a very careful analysis of the non-statistical evidence should be made before a commitment of Commission resources.

9.Q The Commission has been criticized by this Committee and others for its policies concerning the settlement of cases. As you know, one of the reasons that Congress created the Commission was to ensure that Title VII would be enforced by an agency with the power, and I quote the Supreme Court in the Gardner - Denver decision, "to settle disputes through conference, conciliation, and persuasion." In the past, the Commission has been accused of settling cases without merit, of running roughshod over the rights of plaintiffs in order to achieve quick settlement, and at the same time, of delaying settlement in other cases in order to bring greater pressure on the employer, even though the delay is unwarranted. What actions can the General Counsel take that will ensure that the Commission is appropriately balanced between its mandate to achieve settlement where possible and its legal responsibility to protect the rights of all parties to a complaint?

A Deciding whether to settle a case or to litigate it has been a large part of my private practice for the past several years. In my experience, the best settlements are achieved when the case is properly evaluated and prepared for litigation. While the General Counsel has no responsibility for settlement of cases prior to the failure of conciliation, the settlement of cases once litigation is commenced is the responsibility of the General Counsel. In that connection, my overall goals of training, case evaluation and professional trial preparation should help assure fair settlements, when achieved, will protect the public interest.

December 9, 1982

Honorable John Heinz
Senate Labor and Human Resources
Committee
United States Senate
Washington, D.C. 20510

Dear Senator Heinz:

Please find enclosed my responses to your written questions regarding my confirmation as General Counsel of the Equal Employment Opportunity Commission. Thank you for taking an interest in the issues and tasks facing the General Counsel's office.

Very truly yours,

David L. Slate

DLS/spy
Enclosure

QUESTIONS FOR DAVID L. SLATE, SUBMITTED BY SENATOR JOHN HEINZ

1.Q What is your assessment of the EEOC's ADEA litigation program to date?

A I have not yet seen all the internal EEOC data which would enable me to evaluate the Commission's ADEA litigation program to date. I understand that until recently most EEOC litigation under the ADEA has been the completion of cases originally filed by the Department of Labor. As to the future, I believe that enforcement of ADEA is an important responsibility of both the Commission and the General Counsel. One of my priorities, if confirmed, will be to evaluate the EEOC's ADEA litigation program to assure that it is effective and forms a part of a balanced litigation program which addresses all statutes that EEOC is charged with enforcing.

2.Q How do you view your role as General Counsel with respect to ADEA policy development?

A The Commission is responsible for the formulation of policy, with respect to the ADEA as well as the other statutes enforced by the EEOC. As General Counsel, I would be available to inform the Commission, in an advisory capacity, regarding the issues and trends developing through litigation. If confirmed, I will be guided in exercising my professional judgment in the litigation context by the overall policy set by the Commission.

3.Q Have you had a chance to review the Senate Special Committee on Aging's oversight report of the Commission's enforcement of the ADEA? Do you have any comments?

A I have not yet had an opportunity to review the report to which you refer. However, as a part of my evaluation described in the answer to Question # 1, I plan to study the report promptly, and would be happy to provide the Committee with my comments at that time.

4.Q The number of ADEA cases filed in the courts by the Commission has recently fallen off rather dramatically despite continued increases in complaints to the EEOC. What are your projections for the next fiscal year in terms of such litigation?

A I am not in a position at this time to make projections of the number of cases which might be approved for filing by the EEOC. However, I have been advised that

there has recently been an increase in the number of ADEA cases submitted for consideration for litigation. If I am confirmed, I plan to evaluate all cases carefully for litigation, including ADEA cases. Where there is strong, probative evidence that unlawful discrimination has occurred, the Office of the General Counsel will recommend that the Commission approve litigation.

5.Q Unlike Title VII, the Commission has dedicated no ADEA personnel or resources to the development of an ADEA systemic enforcement program. Would you support a restructuring within the Commission to promote a greater focus on systemic litigation in the age area?

A It is not at all clear to me that a restructuring would be required. The Commission does not have available the type of reported statistics and employment data for Age as are available for other protected groups pursuant to Title VII. These statistics frequently are the basis of systemic investigations, charges and litigation. However, a pattern of charges under the ADEA may indicate that the practices of an employer, union or employment agency warrant a directed investigation. Should such an investigation result in the institution of litigation, enforcement would be analogous to systemic litigation.

6.Q Will the Commission risk losing its institutional expertise in ADEA law as a result of its current internal reorganization, which is premised upon combining Title VII and ADEA functions at all levels?

A Although there are some statutory differences, the principles of employment discrimination law generally are applicable to both Title VII and ADEA cases. Attorneys in the private sector are able to maintain their expertise in both areas. Expecting Commission personnel to do the same runs no substantial risk of a loss of institutional expertise. In my view, the key to institutional expertise is providing adequate research, experience and training to appropriate Commission personnel.

7.Q Does it make sense for the Commission to have such a heavy concentration of lawsuits filed in police and firefighter age cases? Does this not reflect an inefficient use of scarce litigation resources to deal with a very limited policy issue which might be resolved in a more expeditious and less costly fashion through the Commission's Section 9 rulemaking authority?

A One of my top priorities, if confirmed, will be to assure that case selection reflects a balanced and well

considered litigation strategy. Selecting cases judiciously and litigating them effectively enhances EEOC's efforts with respect to voluntary compliance by employers, unions, and employment agencies. I do not know if the imbalance which you suggest exists, and if so, what the reasons have been for that focus. If confirmed, I will look into the specific concerns which you raise to assure that EEOC's litigation efforts are not unnecessarily duplicative. In the area of policy issues and rulemaking, this responsibility and authority is exercised by the Commission. As General Counsel, I would be available to the Commission in an advisory capacity.

Senator NICKLES. Thank you for your cooperation and appearance before the committee today.

Mr. SLATE. Thank you, sir.

Senator NICKLES. Thank you.

Our next guest is the nominee for Deputy Director of ACTION. It is my pleasure to introduce a good friend and fellow Oklahoman, Betty Brake. Mrs. Brake, welcome to our committee.

STATEMENT OF BETTY H. BRAKE, NOMINATED TO BE DEPUTY DIRECTOR, ACTION AGENCY

Mrs. BRAKE. Thank you, Senator.

I am honored to be here and to be the President's nominee for the position of Deputy Director at ACTION.

Senator NICKLES. Let me make just a comment on your behalf. As a Senator from Oklahoma and with your being a constituent of mine, I will brag on you a little bit.

Mrs. Brake, the nominee before us, has a track record of dedication, excellence, and vitality in community service which I had the pleasure of personally witnessing. She is a longtime resident of Oklahoma—Oklahoma City, in fact—and she received her bachelor's degree from the University of Oklahoma.

She has been active in Girl Scouts of America and the Republican Party, including serving as cochairman and executive director of the Oklahoma Reagan for President Committee.

In October of 1981, Betty was named executive director of the White House Conference on Aging by Richard Schweiker, Secretary of the Department of Health and Human Services. The national conference was held from November 30 to December 3, 1981. Delegates from across the United States convened to address the concerns of the elderly and to formulate practical answers to meet those needs.

Most recently, Betty has been serving in the ACTION Agency as Deputy Associate Director for older American volunteer programs. In this capacity, Mrs. Brake has overseen the activities of more than 323,000 volunteers in the retired senior service volunteer program, Foster Grandparent program, and the senior companion program. I have been told that, under her tenure as Deputy Director,

the number of volunteers in these programs has increased dramatically.

However, the capacity in which I am most familiar with Betty is as a friend and as a tireless coworker. In that framework, I wish to welcome her to this committee.

Also, I eagerly anticipate that she will be confirmed by the Senate.

Mrs. Brake, welcome to this committee. We are glad that you are here and glad that you have been honored, I think, by the President to be Deputy Director of ACTION.

Mrs. BRAKE. Thank you, Senator, and thank you for those kind words.

Senator NICKLES. Before you proceed, I would like to have entered into the record a statement by our colleague, Senator David Boren from Oklahoma, and also an opening statement by Senator Hatch.

[The prepared statements of Senators Hatch and Boren follow:]

PREPARED STATEMENT OF SENATOR HATCH

The CHAIRMAN. I am pleased to support the nomination of Ms. Betty H. Brake of Oklahoma, who has been nominated by President Reagan to be Deputy Director of ACTION Agency. Ms. Brake has served as the Associate Deputy Director for Older Americans Volunteer programs since April 1981, providing technical assistance and supervision for the Older Americans Volunteer programs. In this capacity, she also conducted training workshops and budget reviews for this program.

Mrs. Brake will bring to her position a working understanding of the operation of ACTION and the essential role of volunteer programs. This combined with her previous experience will prove invaluable as she assumes additional responsibilities within the Agency.

During the upcoming legislative session, the Committee on Labor and Human Resources will conduct reauthorization hearings on the programs within the ACTION Agency. I look forward to receiving President Reagan's recommendations for this program, and also Mrs. Brake's insights into the future goals of ACTION.

PREPARED STATEMENT OF SENATOR BOREN

Senator BOREN. Mr. Chairman, distinguished committee members, I am honored to speak in favor of the confirmation of Mrs. Betty Brake as Deputy Director of ACTION. Mrs. Brake is a competent, experienced administrator, having previously served as Associate Deputy Director of the Older Americans Volunteer program.

In addition, she brings to the task before her the everinsightful perspective of an Oklahoman. Mrs. Brake is a native of Oklahoma City and earned a bachelor of arts degree from the University of Oklahoma. I am pleased that Mrs. Brake is offering her skill and her good Oklahoma sense to citizens of the United States. I urge her confirmation as Deputy Director of ACTION.

Senator NICKLES. Please proceed.

Mrs. BRAKE. All right.

I have submitted for the record an opening statement, but I will not go into that. I will not read it, other than to say that I have thoroughly enjoyed being at ACTION, which is the volunteer agency, and my work with the Older American Volunteer programs, which are unique in Government programs.

I would be glad to answer any questions that you may have.

Senator NICKLES. Your statement will be entered into the record as if read.

I might ask you, how many volunteers do you currently have under all the ACTION programs? Do you have that figure?

Mrs. BRAKE. I do not have that figure. There are over 340,000 in the Older American Volunteer programs, which is the largest part of the volunteers. There are also the young volunteers, VISTA volunteers, and the Vietnam veteran volunteers, which add to it.

Senator NICKLES. Would you provide that for the committee?

Mrs. BRAKE. I will be glad to.

[The prepared statement of Mrs. Brake and information referred to follows:]

Testimony of Betty H. Brake

DEPUTY DIRECTOR-DESIGNATE of ACTION
before the

Senate Committee on Labor and Human Resources

December 8, 1982

Mr. Chairman, distinguished members of the Senate Committee on Labor and Human Resources. I am honored to appear before you this morning as the President's nominee for Deputy Director of ACTION, the Federal agency for citizen voluntary service.

As you know President Reagan has placed an emphasis on voluntarism, not solely to aid worthwhile programs faced with decreasing availability of governmental funds but, more importantly, because voluntarism is in the best American tradition of self help which rewards not only the recipent but also the volunteer who gives of his time.

Since April 1981, I have been the Associate Director of ACTION's Older American Volunteer Programs. Before coming to Washington, voluntarism was a substantial part of my life for the many years I lived in Oklahoma City.

But the role I've enjoyed the most up to this point, has been working with ACTION's headquarters and field staffs and with the project directors and the Foster Grandparents, Senior Companions and Retired Senior Volunteers.

I recognize the wisdom, vitality and experience of older Americans. And there are no better examples than the 342,000 volunteers who serve through the Older American Volunteer Programs throughout the nation.

My responsiblity as Deputy Director will be those traditionally associated with the position. I will be responsible for the day-to-day operations of the agency working closely with the Executive Officer and other agency managers to ensure efficient and responsive implementation of the programs and mission of the agency.

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I see the responsibility as largely a management function, administering a public trust, and ensuring that the policy initiatives of the President and the Director are implemented and that the legislative intent of the Congress is fully carried out. I assure you that in carrying out the managerial duties, I will seek the maximum utilization of the talents of all ACTION employees and I will seek to enhance the team spirit dedicated solely to getting our job done even more effectively.

It is very important in a small federal agency such as ACTION to approach our jobs with a united and energeric effort. We do not receive massive sums of money or have a large systematized delivery system for services. What we do have are excellent programs which depend on a partnership with public and private organizations and with individuals who are able to mobilize citizens to provide voluntary service to their fellow citizens. In our staff and in our programs, self-help, neighborliness, and initiative are the guide words.

It is my commitment and my pledge to provide the ACTION programs my total effort in order to ensure the highest possible level of professional management support. I am highly honored that the President has expressed his trust and confidence in me by extending this nomination. I ask the members of the Committee for your support today and in the future as we work together. Thank you.

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STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: BRAKE (LAST) Betty (FIRST) Hess (OTHER)

Position to which nominated: Deputy Director of ACTION Date of nomination: October 21, 1982

Date of birth: 14 (DAY) 05 (MONTH) 20 (YEAR) Place of birth: Oklahoma City, Oklahoma

Marital status: Divorced Full name of spouse: Charles Murray Brake, MD (Deceased)

Name and ages of children: Michael M. Brake - 35; Peggy A. Brake - 22; Richard J. Brake - 33; Deborah J. Brake - 25

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Harding Jr. High Sch. Oklahoma City, Okla.	1932-1935		
Classen High School Oklahoma City, Okla.	1935-1938		
Mt. Vernon Seminary Washington, D.C.	1938-1939		
Univ. of Oklahoma Norman, Okla.	1939-1942	1 - B.A.	1942

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Chi Omega Sorority	Treasurer Vice President	1940-1942
Chi Omega Alumnae		
Univ. of Oklahoma (Assoc.)		
Girl Scouts of America		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

10/21/82 to Present:	ACTION, 806 Conn. Ave., N.W., Wash., D.C., Deputy Director Designate
04/01/81 to 10/20/82:	ACTION, 806 Conn. Ave., N.W., Wash., D.C., Assoc. Dep. Dir., Older American Vol. Programs
09/80 to 11/80:	Reagan-Bush Committee, 123 NW 23, Oklahoma City, Okla., Political Director
09/79 to 06/80:	Reagan for President Comm., 123 NW 23, Oklahoma City, Okla., Political Director
09/76 to 09/79	Herbert H. Johnson, Okla. Political Action Com., 111 NW 23, Okla. City, Okla., Asst to Exec. Dir.
09/75 to 09/76	Reagan for President Comm., 2315 N. Broadway, Okla. City, Okla., Political Director
01/75 to 09/75	Herbert H. Johnson, Okla. Political Action Comm., 111 NW 23 Okla. City, Okla., Asst. to Exec. Dir.
04/44 to 01/57	Concho Construction Co. (Moore Hess), Okla. City, Okla., Office Manager
06/42 to 11/43	Concho Construction Co. (Moore Hess), Okla. City, Okla., Office Manager
06/39 to 06/42:	Concho Construction Co. (Moore Hess), Okla. City, Okla., Secretary and Bookkeeper

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Co-Chairman and Executive Director, Oklahoma Reagan for 1980 - President Committee

Co-Chairman and Executive Director, Oklahoma Reagan-Bush Committee

Nominal Contributions to: Okla. State Republican Committee

Edwards for Congress Committee (Okla.)

Reagan for President Committee

Kamm for Senate Committee

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

None

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

CURRENT NUMBER OF VOLUNTEERS

	as of 12/10/82	as of 9/30/83
Volunteers In Service to America (VISTA)	2,100	2,100
University Year for ACTION (UYA)	----	----
Young Volunteers in ACTION (YVA)	3,000	15,000
Fixed Income Consumer Counseling (FICC)	1,517	1,894
Vietnam Veterans Leadership Prog. (VVLP)	1,500	2,500
Retired Senior Volunteer Program (RSVP)	333,100	345,000
Foster Grandparent Program (FGP)	18,100	18,100
Senior Companion Program (SCP)	4,200	4,200
Community Energy Project (CEP)	5,025*	5,000
Minority Business Development Agency (MBDA)	----	30

*(of the 5,025, about 25 are either VISTA or OAVP volunteers--the remaining 5,000 are non-stipended)

Senator NICKLES. You have a little time.

But the older Americans which you presided over for, what, a year——

Mrs. BRAKE. A year and a half, a little more.

Senator NICKLES [continuing]. Is the largest segment under ACTION.

Mrs. BRAKE. Yes.

Senator NICKLES. By far?

Mrs. BRAKE. Yes, by quite a bit, in both funding and the total number of volunteers.

Senator NICKLES. Has that number of volunteers increased substantially in the last year or so?

Mrs. BRAKE. Yes, it has. It has increased over the years and dramatically in the last year and a half.

Senator NICKLES. To what would you attribute this increase in the number of volunteers?

Mrs. BRAKE. I think the major part of it is that we have, of course, tried to better utilize our money for more funding of more volunteers; we also have worked through interagency agreements with the Department of Justice in juvenile justice and juvenile delinquency and with the Department of Health and Human Services in the Head Start, teenage pregnancy, and child abuse areas, which were all areas in which the senior volunteers were already working. We have been able to expand volunteer efforts through agreements with those other departments.

Senator NICKLES. I am not as familiar, possibly, as I should be with some of the senior volunteer programs. I think you have three or four different programs.

Mrs. BRAKE. Three.

Senator NICKLES. Three?

Mrs. BRAKE. Three.

Senator NICKLES. Such as what, RSVP?

Mrs. BRAKE. Yes; the three are RSVP, retired senior volunteer, program, which is different from the other two; the Foster Grandparent and Senior Companion programs allow low-income elderly to provide volunteer service. They serve 20 hours a week and receive $2 an hour—the foster grandparents serve children with special or exceptional needs; the senior companions with frail adults. It is both an income assistance, and an opportunity to serve. What we hear so often from the volunteers is, "It is so good to get up in the morning and know I'm needed."

Senator NICKLES. You mentioned they received $2 an hour as a stipend.

Mrs. BRAKE. Yes.

Senator NICKLES. Is this the same in the other two programs?

Mrs. BRAKE. It is the same in the Senior Companion and Foster Grandparent program. They must be low-income elderly. The senior companions, work with adults with special needs, and most of the senior companions are working with frail, elderly adults to prevent institutionalization or to expedite early deinstitutionalization. They visit with their clients 4 hours a day and give assistance in many ways that help people to remain independent.

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Senator NICKLES. Of the total number in the group, the 400,000 people involved in the senior citizens programs, do all those people receive a stipend?

Mrs. BRAKE. Oh, no. The RSVP, the retired senior volunteers who serve in the largest of the programs, do not receive a stipend.

Senator NICKLES. They do not?

Mrs. BRAKE. They receive a meal and transportation, if they request it, when they serve. There is no income eligibility on that. It is for anyone over 60.

Senator NICKLES. 400,000 is a large figure. How many people, say, in Oklahoma would that touch? Would you happen to have that?

Mrs. BRAKE. Oh, in Oklahoma it would probably be 7,000 or 8,000.

Senator NICKLES. Is that right?

Mrs. BRAKE. Yes.

Senator NICKLES. You had a unique experience at ACTION with the White House Conference on Aging with the elderly. What do you think are some of the real needs of this group, and what should the Federal Government be doing differently, possibly, to improve the plight or the outlook for the elderly?

Mrs. BRAKE. Well, I don't know that I can give as broad an answer as you might like to have on that, Senator.

Actually, at ACTION, in the Older Americans volunteer programs, we have a unique focus because we are focusing on service by the elderly rather than to the elderly. I think the 1980 preliminary census figures indicate that something like 83 percent of the elderly are in good health and above the poverty level. They are comparatively well off financially. This is a majority of the elderly. ACTION provides opportunities for those people to serve in their communities and with their fellow citizens. That is a different approach from most other Federal programs for the elderly, which focus on that smaller percentage who need assistance. Of course, ACTION's programs, particularly the Senior Companion program, are helping in many areas the elderly population who require support.

Senator NICKLES. You are familiar with the ACTION proposal, I guess, and that several State offices would to be closed.

Mrs. BRAKE. Yes.

Senator NICKLES. I understand that Oklahoma is one of seven State offices which is scheduled to be closed. Could you explain the proposal and the rationale behind it?

Mrs. BRAKE. I am not aware of all the rationale in developing that proposal. ACTION did receive a substantial reduction in personnel ceiling from OMB, and in order to fit both that and the budget, a reduction in force is necessary. Additionally at ACTION we have had considerable adjustment to make with the separation of the Peace Corps, which changes the workload both in headquarters and in the field. This proposed RIF was developed to balance the workload and adjust it to the current needs. The plans were made to close out around 13 State offices and combine those with other States as an economy measure.

Senator NICKLES. Will there be a reduction in the services provided by those States with the absence of the offices?

Mrs. BRAKE. No; the intent is to keep the services but reduce the cost of giving the services.

Senator NICKLES. Reduce the overhead that is involved.

Mrs. BRAKE. Yes.

Senator NICKLES. For instance, in Oklahoma, do you happen to know how many full-time paid people we had in the Oklahoma office?

Mrs. BRAKE. Right now I think we have a State director, State program officer, and a secretary/clerk.

Senator NICKLES. Three persons in that particular office. Is that a similar type of load that would be in others? Do you know how big the nationwide reduction in force is?

Mrs. BRAKE. I believe about 50 persons in the field.

Senator NICKLES. Fifty?

Mrs. BRAKE. Fifty. That is an estimate. I would have to check. The actual number is 60.

Senator NICKLES. All right. And do you happen to know what the number of employees is nationwide, by any chance?

[NOTE.—Since December 8, 1982, the proposed reduction in force in the field has been canceled.]

Mrs. BRAKE. Including the Washington headquarters, it is 570, approximately.

Senator NICKLES. I was just given a paper that said 580, so that is pretty close.

Mrs. BRAKE. We have had some resignations.

Senator NICKLES. It shows the number of reduction in force as 89.

Mrs. BRAKE. Yes; part of that is for headquarters here in Washington. It is not all from the field.

Senator NICKLES. Do you know how many people you have in Washington, D.C.?

Mrs. BRAKE. Of the ones on board right now, it is approximately half here in Washington and half in the field.

Senator NICKLES. Is that right?

Mrs. BRAKE. Yes.

Senator NICKLES. A good part of the reduction, then, has been made in Washington, D.C., but yet with the reduction in force, still the intention and effort is to maintain the services, just reduce the amount of overhead?

Mrs. BRAKE. Yes, and equalize the workload for those in the field.

Senator NICKLES. You have been quoted as saying that you found a number of areas of waste or abuse in ACTION. Could you give us an example, and then what do you think we should do?

Mrs. BRAKE. I don't know where I was quoted on that.

Senator NICKLES. I don't either. I am reading.

Mrs. BRAKE. ACTION is a small enough agency so we are able to do a good job of management, and I think we are doing that, watching the way we spend our moneys and making sure that expenditures are justified, necessary and cost efficient. We have been able to increase the volunteers funded by emphasizing the best use of the funds available.

Senator NICKLES. Well, good. I will compliment you. I think there is some waste and abuse in every program, and, knowing enough of your background, I think you would be an excellent person to try

to eliminate that and make sure that the resources that you do have will be used appropriately and go to help those persons that actually can use some assistance.

Mrs. BRAKE. Thank you.

Senator NICKLES. I will compliment you on that and would encourage you, when you can find those areas, to do your best to eliminate them, which I am sure that you will.

Mrs. BRAKE. That is what we like to do.

Senator NICKLES. Mrs. Brake, I have no further questions. I want to compliment you again for the comments that you made and also the fine work that you have done in ACTION in the past, and I am sure that your contributions will greatly enhance not only the stature but also the quality of work that is coming out of ACTION in the future. We are glad to see that you are there and pledge to you the cooperation of this committee in the future to help implement, I think, some positive assistance in a worthwhile area. Thank you very much.

Mrs. BRAKE. Thank you, Senator.

Senator NICKLES. We would like to leave the record open in case additional Senators would like to ask you questions.

[Responses of Mrs. Brake to questions of Senators and additional material supplied for the record follows:]

ACTION
WASHINGTON, D.C. 20525

OFFICE OF
THE DIRECTOR

December 14, 1982

Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are my responses to the questions submitted by yourself, Senators Kennedy, Riegle, Metzenbaum, and Pell.

I hope this material is helpful to you and to your Committee.

Thank you for your attention to this matter.

Sincerely,

Betty H. Brake
Deputy Director, Designate

Questions Submitted by Senator Orrin Hatch to Betty H. Brake for Response

1. In view of the valuable contributions of volunteer programs and a desire to increase their effectiveness, what are appropriate ways to maximize the amount of volunteer support with the funds available?

   There are several ways to maximize volunteer activities within the funds available. One, which we have implemented, is to contain escalating administrative costs in ACTION's programs and maximize the funding of volunteer services. Also, ACTION Is currently working with the Departments of Justice and with Health and Human Services under inter-agency agreements utilizing volunteers in appropriate areas of their service delivery systems. Both Foster Grandparents and Retired Senior Volunteers are working very successfully in Juvenile Justice and Head Start settings. In addition, ACTION provides seed-money to initiate viable volunteer projects which then become the responsibility of the local community.

2. Having worked with an aspect of the ACTION programs, what in your perspective are the essential technical assistance needs of the various programs ACTION serves?

   Technical assistance in the day-to-day project operations appears to be most practical and most valuable when provided by ACTION field staff and experienced project directors. Assistance in special programmatic areas is provided by specialists in the field: i.e., literacy, drug abuse, etc. This type of assistance can be enhanced when combined with assistance from those actually working directly with the problem. When evaluating the agency's training conferences, the project directors always give the highest marks to the sessions conducted by someone working with the problem rather than the experts who are studying the problem.

Questions Submitted by Senator Claiborne Pell for Betty H. Brake's Response

1. As Director of the Older American Volunteer Program, what role did you plan in designing the latest RIF?

   None.

2. Why is the RIF being planned prior to final Congressional action on the ACTION Agency's FY'83 budget?

   The primary reason for the planned RIF stemmed from the fact that the Office of Management and Budget reduced the Agency's full time equivalent ceiling after it approved our FY 1983 submission. The reduction, to 509 FTE's was promulgated by OMB after the transfer of employees from ACTION to the Peace Corps, upon the latter's separation from this Agency. Because ACTION commenced FY 1983 with an on-board strength of about 580 employees, in order to meet the 509 total of FTE's by the end of this fiscal year, a RIF of the size planned was needed to reach that number. The effective date for the RIF was January 21, 1983, by which time over one quarter of the fiscal year would already have passed, with employment at a level considerably above the 509 figure.

3. Have any state offices been closed or consolidated since the initial announcement of the RIF on October 1, 1982?

   No.

4. In light of Senate Labor/HHS Appropriations language prohibiting the use of appropriated funds to reduce ACTION State office staff or close any ACTION State offices, is ACTION still proceeding with its plans to implement a RIF and close state offices?

   ACTION is not proceeding with plans to close state offices.

5. As I'm sure you are aware, the House was very concerned about the growing number of non-career employees hired by ACTION since the RIF last November of over 180 employees. The House Report accompanying the FY'83 appropriations bill placed a 5% ceiling on the number of non-career employees within ACTION. Does ACTION intend to comply with this language.

   ACTION has an authorization of 5 PAS positions, 5 non-career SES and 35 Schedule C's. Several are currently vacant. Only those policy making positions, as approved by OPM or legislation may be filled through use of these authorities. We are currently discussing this matter with the House Appropriations Committee.

6. Have you considered a furlough plan or other alternative plans that would be cheaper and less disruptive than a RIF?

No. Positions identified for RIF are no longer necessary to the mission of the Agency.

7. Won't the closing of ACTION State offices have a negative impact on the Older American Volunteer program?

No. As mentioned previously, state offices are not being closed.

8. Does Rhode Island receive state or private funding to supplement ACTION programs, and specifically, the Older American Volunteer Program? How much? When ACTION's presence is removed from R.I., how will you be able to maintain and develop additional funding sources?

Yes. Our records show $145,000 from the state and $10,500 from the private sector. Project sponsors and project directors have developed this added support for the Older American Volunteer Programs in Rhode Island and, I am sure, can be relied upon to maintain it and develop additional non-ACTION sources of support. Again, as mentioned previously, ACTION's presence will not be removed from Rhode Island.

9. Do you support the purposes and activities of the Older American's Volunteer Programs?

The Older American Volunteer Programs have my total support. With relatively small dollars compared to many other government programs, the OAVP programs accomplish several goals at once. First, the creation of meaningful volunteer opportunities for the elderly, involving them in community activities. Second, the service is valuable for the isolated frail elderly and the community. Both the Foster Grandparent and Senior Companion Program provide income assistance to those elderly in the most need. Few government programs accomplish so much with so little.

10. Do you support continuing the present funding level for the Program?

Absolutely. While it is unrealistic to expect an increase in funds, the programs can hopefully be expanded through Interagency Agreements where the Older American Programs are cooperating in compatible missions of other agencies.

RESPONSE TO QUESTIONS FOR BETTY BRAKE SUBMITTED BY SENATORS KENNEDY, RIEGLE AND METZENBAUM

1. As Deputy Director of ACTION, I assume that you would become more involved in the day to day operations of the agency. How will the responsibility for management and policy be divided between yourself and Mr. Pauken, the director of the agency?

   As Deputy Director of ACTION, I will serve as the Director's chief assistant in the operation of the agency.

2. Will you continue to play a significant role in directing the Older American Volunteer Programs?

   I will have a significant role in all agency programs. My previous work with the OAVP programs should be an added advantage to both the agency and the programs.

3. Would you explain the denial of refunding for the New York State Foster Grandparent Program sponsored by the Office of Mental Retardation and Developmental Disabilities? Please provide the specific reasons for the decision.

   A comprehensive packet is attached which outlines the reasons.

4. a. I understand that the Commissioner of the sponsoring office responded to ACTION's concerns by letter in August. The sole response from your agency was an October 8th letter from ACTION's regional director referring to the Commissioner's responses as immaterial and irrelevant. Do you agree with that characterization?

      The OMRDD "response" to ACTION's analysis of the problems did not address the overriding problems.

   b. Do you feel this was a reasonable response by the regional director?

      In my opinion it was a rather blunt but accurate response.

5. a. In terms of federal dollars only, what was the cost of the New York State Foster Grandparent Program?

   b. How does this compare with the costs of federal dollars of Foster Grandparent Programs in other states?

      The answers to these questions are included in the attached materials.

c. What is the record of this program in terms of securing state funding?

OMDRR - History of State Funding				*VSY
4/82	to	11/82	672,850**	530
4/81	to	3/82	911,374	530
4/80	to	3/81	719,544	530
7/79	to	3/80	526,867	530
4/78	to	6/79	586,509	534
4/77	to	3/78	581,986	534
4/76	to	3/77	317,788	454
6/75	to	6/76	303,849	450
6/74	to	6/75	265,098	450
6/73	to	6/74	215,198	450
6/72	to	6/73	164,357	450

*VSY= Volunteer service years funded
**The $672,850 was the award on an eight month grant, the annualized level would be $1,009,274

The above data is based on figures that were in the Notice of Grant Awards and based on the budget submission by OMRDD. More recent information would lead us to question these figures. The result is that only OMRDD would be able to provide accurate information on their actual dollar involvement with the Foster Grandparent Program.

It should be noted that ACTION is making every effort to maximize volunteer service opportunities for low income elderly with available funds. The necessary component, of course, is containment of administrative costs.

6. I understand that the Director of the New York program is also the elected president of the National Association of Foster Grandparent Program Directors Association. Did that have any influence on the decision to deny refunding of the program?

   None.

7. Since there are so many questions surrounding the denial of refunding, will you agree to continue funding for this project pending the complete examination of the entire issue by this Committee?

   The CMRDD grant has been extended for three months to allow time for a hearing and review.

8. What was your role in the preparation of the proposed regulations concerning the Older Americans Volunteer Program published in the November 2 Federal Register?

   My role was oversight as the Washington OAVP staff, ACTION field staff and General Counsel revised, reviewed and coordinated. The proposed regulations were also reviewed with all Project Directors at the Regional Conferences in 1982.

   Note: The revision of all three OAVP regulations had been under way for a number of years prior to my coming to the Agency. Completion of this project became a top priority for me.

9. Please answer the following questions regarding those proposed regulations:

   a. What is your intent with respect to the proposed changes concerning the percentage of local share contributions to RSVP projects?

      To conform to the wording in RSVP legislation while, at the same time, allowing for the greatest flexibility to the projects.

   b. Will projects be required to raise a 40% local share of funding in their fourth year and 50% in their fifth year?

      No.

c. Are there any instances where sponsors have been able to raise more than 30% of the local share of funding?

Yes. Nationally the average local share for RSVP projects is about 40% and a few projects provide a local share of more than 60%.

d. What is the reason for the proposed change in ACTION's policy concerning the assignments of Senior Companion volunteers to proprietary nursing homes?

The changes referred to will be reversed. Our General Counsel advises it is unnecessarily restrictive.

e. What is the agency's policy concerning the use of non-federal funds by OAVP projects?

This policy is outlined in detail in the regulations. Each grant is accompanied by the project's line-item budget, indicating use of both federal and local funds. Program regulations spell out in detail the sponsor's responsibility in moving funds within certain categories.

10. In a November 8th memorandum, the following paragraph is included:

"ACTION federal grant support will no longer be regarded as a annualized figure committed to a given project sponsor. Each project budget will be negotiated between ACTION and the project sponsor . . ."

a. Does ACTION intend to negotiate the level of the federal grant to the project sponsor annually?

Yes, according to achievement of volunteer service and program goals, carry-over balances and demonstrated needs.

b. How will project sponsors be able to plan and develop programs effectively beyond one year?

In the same manner as they presently plan. If a project is achieving both volunteer and program goals within reasonable costs limits, there should be no budget change.

c. What standards will be used in measuring cost effectiveness?

What is reasonable in each geographic, demographic area. While there are national averages, they cannot be used as a measure. However, if a project's cost is 5 times the national average, that fact indicates a thorough review is in order.

d. Is it ACTION's intention to reduce federal grants for projects who have achieved a high level of non-federal support?

No.

11. What is your position on capping the use of federal dollars for the salaries of OAVP project directors?

This action is an option of the Regional Directors, using appropriate local salary scales. National policy is broad in requiring that all project administrative costs be appropriate for low cost, volunteer programs.

12. What is ACTION's current policy concerning OAVP project director's attendance at state or regional meetings or conferences? Is this a change from previous policy? If so, why was it changed?

Only ACTION sponsored conferences may be budgeted. (One state and one regional conference annually) This is a change in that previously there was no policy. The change was made for two reasons: 1) To contain costs and 2) To place the decision with the local sponsor.

13. a. Are you aware of this Administration's desire to eliminate the VISTA program?

Yes

b. Do you support that position?

Yes

c. If approved as Deputy Director, will you work to implement the elimination of VISTA or instead will you comply with the Congressional intent embodied in the Continuing Resolution for the last two years that VISTA be continued?

If approved as Deputy Director, I will fulfill my duty to implement legislation passed by Congress and signed by the President.

d. Will you work with ACTION's current leadership to continue its numerous attempts to kill VISTA administratively by:

--refusing to re-enroll, extend or recruit volunteers in FY'83; and

--refusing to spend funds appropriated specifically for administering the VISTA program?

All ACTION programs, including VISTA, are and will continue to be implemented in accordance with the Agency's legislative mandate, rules, regulations and appropriations.

14. How many VISTA projects have you had the opportunity to visit?

None. As Director of the Older American Volunteer Programs, there has been no justification for my visiting VISTA programs.

15. As I am sure you are aware, nearly 300 VISTA volunteers work side-by-side with OAVP volunteers. Have you received any complaints from any of the OAVP programs?

There are 75 VISTA volunteers working with OAVP volunteers. We have not received any complaints.

16. According to data provided by ACTION, approximately 15% of all VISTA projects served the needs of seniors in FY '82. This is a decline from FY '80 when 25% of the projects served senior neeeds. Do you support this decreased emphasis on senior activities?

In 1980 the number of projects exclusively serving the elderly was 10%, not 25%.

17. Should senior citizens have the opportunity to perform full time service in their community and receive a living allowance and a stipend (such as is provided by VISTA and the Peace Corps), or should seniors be restricted exclusively to part time volunteer programs such as the OAVP projects?

Senior citizens, like all ACTION Volunteers, serve important roles in their communities. The ACTION Agency, given its limited budgetary resources, is attempting to expand the number of senior citizens for whom the opportunity to serve can be made available through federal funding. We believe it is preferable to offer more senior citizens a part-time volunteer opportunity than to restrict the number of volunteers through more costly full-time service.

Additionally, ACTION administers programs as mandated by law. All current Older American Volunteer Programs are part-time, as legislated.

18. a. How many volunteers have been recruited in FY '83?

No VISTA Volunteers have been recruited in FY '83 pending final Congressional determination of the Administration's request to phase-out the VISTA program in FY '83.

b. How does this compare with the last five fiscal years?

The following number of VISTA Volunteers entered the field during the last five fiscal years.

FY'78	FY'79	FY'80	FY'81	FY'82
3,336	3,518	4,718	2,418	2,514

c. How many volunteers have been allowed either to re-enroll for another year of service or to have short-term extensions of their current service?

On October 6, 1982, it became general policy not to allow extensions of VISTA Volunteers due to the uncertain budget for fiscal year 1983. However, requests for extensions are considered on a case-by-case basis. Since October 6, eight (8) volunteers have had their term extended and three (3) volunteers have been reinstated after medical leave. Prior to October 6, there were no restrictions placed on extensions as long as the number of budgeted volunteer service-years was not exceeded.

No full year enrollment has been allowed beyond the current terms of the VISTA projects.

d. How many VISTA Volunteers are currently working in anti-poverty projects throughout the country? How does this compare with the last five years?

The prime criteria for a VISTA project is that it be poverty-oriented in scope. Further, potential sponsors must answer a series of questions designed to ensure that all projects are based on low-income communities and that the project fully involves people from the community to be served. The questions are:

"Describe how the low-income people you propose to serve are included in the planning of this project."

"How will low-income people be involved in the development and implementation of the proposed project?"

"What are your plans for continuing the work of this project on behalf of the low-income community after the VISTA Volunteers are withdrawn?"

Approval of a VISTA proposal requires satisfactory responses to these questions.

19. What was the funding level for VISTA and the Older American Volunteer Program for FY'82? How does this compare with the current funding levels under the Continuing Resolution for FY'83? In light of the reference in the FY'83 Continuing Resolution to the "current funding level," explain the reasons for differences in those two figures?

The funding level for Older American Volunteer Programs was $84,637,000 in FY 1982 and the same under the terms of the present Continuing Resolution for FY 1983.

The funding level for VISTA was $16,000,000 for FY 1982 and is $8,000,000 under the terms of the present Continuing Resolution.

The present Continuing Resolution, H.J. Rs. 599, refers to maintaining current operating levels but also specifies as "not otherwise provided for." The Senate Report, 97-581, accompanying the Continuing Resolution, states, in this regard, at pp. 2-3, "The current rate should be construed to maintain year-end program funding levels, except where Congress had expressed a contrary intent with respect to specific programs."

The ACTION General Counsel has construed that this language, after consultation and discussion with Senate and House Appropriations Committee staff, requires reference to the current authorization level, previously established by Congress, P.L. 97-35, as it pertains to VISTA.

The pertinent portion reads as follows:

"National Volunteer Anti-poverty Programs

"Sec. 501. There is authorized to be appropriated to carry out Title I of this Act $25,763,000 for fiscal yer 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than $16,000,000 shall first be available for carrying out Part A of Title I for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out Part A of Title I for fiscal year 1983."

Thus, the earlier Congressional intent referred to in the Continuing Resolution is contrary to maintaining present funding levels, in that the authorization for Title I programs, which include VISTA, are substantially less for FY 1983 than for FY 1982.

20. The last evaluation performed on the VISTA program showed it to be extremely cost effective. The average VISTA cost approximately $7,000 per year and recruited an average of 12 volunteers and $24,000 in resources for his or her local community.

a. Has ACTION done any evaluation of VISTA in the last two years that contradicts these statistics?

The "evaluation" to which the question alludes addressed its conclusions on the basis of informal responses from the volunteers themselves, without employing procedures designed to produce a more reliable result. Therefore, we do not treat this informal survey as a scientific evaluation. Nor has any effective evaluation been conducted in the last two years which addresses VISTA volunteer recruitment and fund-raising activities.

b. Are there any other volunteer programs which duplicate or exceed the cost effectiveness of VISTA? In particular, please compare your Young Volunteers in ACTION (YVA) in terms of cost effectiveness to VISTA.

It is not possible to compare precisely the cost-effectiveness of a wide variety of volunteer programs, some of which are part-time and either stipended or non-stipended, and others of which are full-time and stipended. However, it seems self-evident that, given the nation's need for volunteer resources in a time of budget constraints affecting both government-supported and non-government-supported projects, expanding the number of part-time, non-or low-stipended volunteers in every community in America must be the highest priority for the allocation of volunteer resources. For this reason, ACTION believes the VISTA program less cost-effective and less effective in general than, for instance, the Retired Senior Volunteer Program, which costs the federal government less than $100 per volunteer each year.

Young Volunteers in ACTION is designed to encourage among youth aged 14 to 22 a sense that it is their obligation as citizens to assist low-income Americans in gaining economic self-sufficiency. These youth must do so not because they are paid by the federal government, but because they have an obligation to help. If adopted in a widespread fashion, such volunteer efforts cannot help but be more effective over the long-run than VISTA, which is limited to what the federal government can "afford" in a given fiscal year. Specifically, in FY'82 the average cost per hour for the original twelve YVA projects was $4.40. This figure does not include funds that were left over at the end of '82 and used for extensions or renewals.

21. It has come to the attention of Congress that ACTION intends to implement a RIF that would result in the elimination of approximately twelve state offices. However there appears to be some conflicting information regarding the RIF.

a. What is the correct number of employees scheduled to be terminated? How many non-career people will be terminated?

As originally proposed 89 positions were scheduled for abolition. No non-career positions were in this total.

b. List the state offices that will be closed?

ACTION is not proceeding with plans to close existing state offices.

c. What is the cost to the agency for FY'83 if this RIF is implemented?

None. The savings in FY'84 and beyond would have been approximately $3 million annually in personnel and office cost.

d. When do you intend to implement this RIF?

The RIF was planned to be effective January 21, 1983.

e. In light of the Senate Labor, Education, HHS Appropriations bill Committee Report Language prohibiting the use of appropriated funds to reduce the state office staff or close the state office, why is ACTION still proceeding with plans to implement the RIF and close state offices?

ACTION is not proceeding with plans to close state offices.

f. Why is the agency proposing to implement a RIF during the period of the Continuing Resolution when the CR specifically stated that there should be no reductions in on-going program activity and staffing levels from the levels in FY'82?

ACTION has carefully reviewed legislative intent with regard to RIF's in general and this agency in particular. Both the House and Senate report language for the current Continuing Resolution clearly state that reductions in personnel levels are not required under its terms. This language does not prohibit reductions in force.

22. a. What was your role in designing this proposed RIF?

None.

b. Why is the RIF necessary?

To reach FY'83 ceiling of 509 Full-Time Equivalent employees.

c. ACTION's FY'83 budget submission shows that $25,815,000 would support 558 full time equivalent employees. This level was accepted by the House and approved by the Senate Appropriations Subcommittee. According to a November 8th memo, ACTION currently has 572 full time equivalent employees on its payroll. Why then is it necessary to RIF 89 employees and close 12 state offices.

The primary reason for the planned RIF stemmed from the fact that the Office of Management and Budget reduced the Agency's full time equivalent ceiling after it approved our FY 1983 submission. The reduction, to 509 FTE's, was promulgated by OMB after the transfer of employees from ACTION to the Peace Corps, upon the later's separation from this Agency. Because ACTION commenced FY 1983 with an on-board strength of about 580 employees, in order to meet the 509 total of FTE's by the end of this fiscal year, a RIF of the size planned was needed to reach that number. The effective date for the RIF was January 21, 1983, by which time over one quarter of the fiscal year would already have passed, with employment at a level considerably above the 509 figure.

23. Have you considered any alternatives to the RIF? List all alternatives considered and why they were rejected.

No.

24. I understand that state offices in Iowa, Idaho, Illinois, Georgia, Indiana, Montana, West Virginia, South Carolina and Wyoming will have an "ACTION presence" or "out-stationed personnel". What do these terms mean?

ACTION had proposed maintaining a career program officer in each of these states.

25. From mid June 1981 through October 1982, a time that spanned two notifications of RIFs, ACTION hired approximately 89 non-career employees. As of October 1982 62 of these still are on the payroll. Why has ACTION continued to hire non-career employees while it continues to discharge career employees? Describe the specific jobs and salaries for these non-career employees.

ACTION has filled both career and non-career positions as needed to carry out the mission of the agency. Position descriptions are attached.

26. The government as a whole has approximately 1% non-career employees, yet ACTION has an excess of 10%. Why does your agency need such a disproportionate number of political employees?

If you are confirmed as the Deputy Director, will you work to comply with the language in the House Appropriations Committee Report which establishes a 5% ceiling on non-career employee positions?

ACTION has an authorization of 5 PAS positions, 5 non-career SES and 35 Schedule C's. Several are currently vacant. Only those policy making positions, as approved by OPM or legislation may be filled through use of these authorities. We are currently discussing this matter with the House Appropriations Committee.

27. Is the RIF partially or wholly based on the elimination of the VISTA program even though Congress has not approved such an elimination?

The planned RIF was based on a review of Agency needs and adjusted workloads, both in the field and in headquarters, after the completion of the separation from Peace Corps and an adjustment of priorities which focuses on the Older American Volunteer Programs.

28. a. What criteria were employed to decide which field and headquarters positions would be eliminated?

Workload was the primary criteria for identification of positions to be abolished.

b. What criteria were used to determine which states were merged and which states retained their state offices.

Locations of state offices are based on consideration of management efficiencies relative to cost, travel and other overhead expenses. Consideration was given to proximity of programs to ACTION offices and the special requirements of some programs for special levels of empathy and understanding in program offices. (Answer for questions 28b and 28c.)

c. Why is there such a wide discrepancy in the distribution of programs between the remaining state offices and the distribution of program offices and workloads in the state offices. For example, why was Iowa with 31 programs slated to be merged with Minnesota and why was Arizona with 9 programs left unmerged? Similiarly, why does Iowa have only 1 staff professional for 31 programs while Arizona has 2 professionals for 9 programs?

See answer 28b above.

29. What will the negative impact on Older Americans Volunteer Programs and VISTA Programs be if the RIF and office closings are implemented?

As mentioned previously, state offices are not being closed.

30. Has OMB indicated to the agency the desire to reduce or eliminate the funding for any program that it currently administers or to transfer any program to another agency?

I am not at liberty to discuss the Fiscal Year 1984 budget until such time as the President submits it to Congress.

ACTION
WASHINGTON, D.C. 20525

OFFICE OF
THE DIRECTOR

December 14, 1982

Honorable Claiborne Pell
United States Senate
Washington, D.C. 20510

Dear Senator Pell:

Enclosed are responses to the questions you submitted to me on December 10, 1982.

I hope they prove helpful.

Sincerely,

"Signed"

Betty H. Brake
Deputy Director, Designate

Enclosure

Questions Submitted by Senator Claiborne Pell for Betty H. Drake's Response

1. As Director of the Older American Volunteer Program, what role did you plan in designing the latest RIF?

   None.

2. Why is the RIF being planned prior to final Congressional action on the ACTION Agency's FY'83 budget?

   The primary reason for the planned RIF stemmed from the fact that the Office of Management and Budget reduced the Agency's full time equivalent ceiling after it approved our FY 1983 submission. The reduction, to 509 FTE's was promulgated by OMB after the transfer of employees from ACTION to the Peace Corps, upon the latter's separation from this Agency. Because ACTION commenced FY 1983 with an on-board strength of about 580 employees, in order to meet the 509 total of FTE's by the end of this fiscal year, a RIF of the size planned was needed to reach that number. The effective date for the RIF was January 21, 1983, by which time over one quarter of the fiscal year would already have passed, with employment at a level considerably above the 509 figure.

3. Have any state offices been closed or consolidated since the initial announcement of the RIF on October 1, 1982?

   No.

4. In light of Senate Labor/HHS Appropriations language prohibiting the use of appropriated funds to reduce ACTION State office staff or close any ACTION State offices, is ACTION still proceeding with its plans to implement a RIF and close state offices?

   ACTION is not proceeding with plans to close state offices.

5. As I'm sure you are aware, the House was very concerned about the growing number of non-career employees hired by ACTION since the RIF last November of over 180 employees. The House Report accompanying the FY'83 appropriations bill placed a 59 ceiling on the number of non-career employees within ACTION. Does ACTION intend to comply with this language.

   ACTION has an authorization of 5 PAS positions, 5 non-career SES and 35 Schedule C's. Several are currently vacant. Only those policy making positions, as approved by OPM or legislation may be filled through use of these authorities. We are currently discussing this matter with the House Appropriations Committee.

3'

6. Have you considered a furlough plan or other alternative plans that would be cheaper and less disruptive than a RIF?

No. Positions identified for RIF are no longer necessary to the mission of the Agency.

7. Won't the closing of ACTION State offices have a negative impact on the Older American Volunteer program?

No. As mentioned previously, state offices are not being closed.

8. Does Rhode Island receive state or private funding to supplement ACTION programs, and specifically, the Older American Volunteer Program? How much? When ACTION's presence is removed from R.I., how will you be able to maintain and develop additional funding sources?

Yes. Our records show $145,000 from the state and $10,500 from the private sector. Project sponsors and project directors have developed this added support for the Older American Volunteer Programs in Rhode Island and, I am sure, can be relied upon to maintain it and develop additional non-ACTION sources of support. Again, as mentioned previously, ACTION's presence will not be removed from Rhode Island.

9. Do you support the purposes and activities of the Older American's Volunteer Programs?

The Older American Volunteer Programs have my total support. With relatively small dollars compared to many other government programs, the OAVP programs accomplish several goals at once. First, the creation of meaningful volunteer opportunities for the elderly, involving them in community activities. Second, the service is valuable for the isolated frail elderly and the community. Both the Foster Grandparent and Senior Companion Program provide income assistance to those elderly in the most need. Few government programs accomplish so much with so little.

10. Do you support continuing the present funding level for the Program?

Absolutely. While it is unrealistic to expect an increase in funds, the programs can hopefully be expanded through Interagency Agreements where the Older American Programs are cooperating in compatible missions of other agencies.

Regional Director for
Domestic and Anti-Poverty Operations

GS-301-15 Schedule C

I. INTRODUCTION

As the Regional Director for Domestic and Anti-Poverty Operations, serves as the principal Regional spokesman for the Director of ACTION, Executive Level III, and the Associate Director for Domestic and Anti-Poverty Operations, Executive Level V, by interpreting national policy and implementing domestic volunteer programs in accordance with applicable statutes and Executive Orders, including PL 93-113, in the multi-state area which comprises the Region.

Regional operations are characterized by diversity, and include hundreds of individual volunteer projects, divided among more than fifteen different programs, which are performing highly diverse services for many different types of sponsoring organizations and using volunteers from all demographic and educational categories, working in a wide range of cultural and ethnic settings.

As an active advocate of the policies of the current Administration and the Director of ACTION, is responsible for managing the staff, funds, and complete operations of the Regional Office. The incumbent is responsible for approving, disapproving, and implementing ACTION volunteer programs Region-wide.

II. DUTIES AND RESPONSIBILITIES

1. Serves as the principal contact point and maintains constant liaison with the State governments, particularly with the Governors within the Region, on matters pertaining to the various ACTION programs. Serves as ACTION representative on Regional Committees involving appearances before State and local bodies to provide expert advice on workings and administration of the ACTION volunteer programs. As an active advocate of the current Administration's policies, insures that the Agency Director's concerns and viewpoints are accurately imparted throughout the Region at the local grass-roots level.

2. As the Regional representative of the Associate Director for Domestic and Anti-Poverty Operations, performs representational functions by promoting ACTION

...ams and voluntarism toward solving human, social and environmental problems. Directs efforts toward assuring broadest possible understanding of Agency and Administration goals and policies by developing and maintaining many contacts both with government officials and at the grass-roots community level. This includes contacts with Congressional representatives; State and local officials; the business and labor communities; organizations of the poor; senior citizens; other social action, ethnic, and community organizations; the media; and volunteers within assigned geographical area. Prepares and delivers speeches before inumerable professional and social organizations for the purpose of disseminating information and creating an interest in current programs as well as to promote appreciation for new concepts and approaches in ACTION volunteer programs and projects.

3. Enjoys the complete confidence of and is principal domestic regional policy advisor to the Agency Director and the Associate Director for Domestic and Anti-Poverty Operations by developing, implementing, and evaluating federally-sponsored domestic volunteer service programs for full-time and part-time volunteers within his jurisdiction. Assumes responsibility for the training, assignment, conduct and termination of all volunteers. Typical projects and/or grants include programs such as Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP), and are in the fields of income improvement, health, consumer protection, education, housing, and manpower development. A broad spectrum of skills and talents are required for these various programs, e.g., architects, education specialists, health specialists planners, attorneys, students, low-to-middle income senior citizens, and low-income volunteers of all ages.

4. Evaluates and approves or disapproves grant applications and provides expert advice and assistance to grantees and potential grantees. Exercises sign-off authority for the allocation of funds up to $250,000 for grants on projects relating to RSVP, FGP, and SCP. Makes final determinations that project goals are accomplishable, and that projects are well programmed and comply with ACTION guidelines, policies, and systems, including the Integrated Programming and Training System, prior to approving the use of ACTION resources to support them.

5. Assumes total responsibility for the administrative management of regional operations and staff, including budgeting; allocation of funds; grants management; contracting; training; and personnel management. Establishes

regional administrative policies and procedures within the overall policy guidelines established by the Agency Director and Associate Director for Domestic and Anti-Poverty Operations. Through a line deputy, manages and coordinates the activities of subordinate Regional Office units for major functional areas, i.e., State Office Operations; Program Operations; Grants and Contracts; Training; and internal administration.

6. Represents and speaks for the Associate Director for Domestic and Anti-Poverty Operations in interface and continual dialogue with businessmen, union leaders, and other influential citizenry to personally stimulate their participation in and backing of the Administration's efforts to solve local social and economic problems through contributions of funds, volunteer services, and other resources. Collaborates with officials of other Federal agencies in the Region in negotiating and/or coordinating plans and projects of mutual interest. Makes decisions concerning other controversial plans or precedent-setting projects requiring a high degree of judgment and discretion.

7. Serves as a member of the Policy Council, composed of the Director, Deputy Director, various Associate and Assistant Directors of ACTION, and the ten Domestic Regional Directors by participating in both immediate and long-range program planning and making related recommendations based on experience and professional knowledge. Through periodic and comprehensive evaluations of Regional activities, makes recommendations to improve the Agency's performance in achieving the purposes and goals set for ACTION by the President, the Congress, and the Director.

III. SUPERVISION AND GUIDANCE RECEIVED

Works under the very broad policy guidance of the Associate Director for Domestic and Anti-Poverty Operations, with delegated authority to direct, administer, and coordinate ACTION programs. Guidance received is in the nature of broad program policy issuances. Work is reviewed for conformance to Domestic Operations and Agency policies and for achievement of program objectives. Work progress and results are appraised through conferences, Regional Director's meetings, and periodic reports.

SCHEDULE C POSITIONS BY ORGANIZATION

TOTAL ALLOCATION - 35
TOTAL FILLED - 33

ACT NUMBER	NAME	TITLE	SERIES/GRADE	SUPERVISOR/GRADE
OFFICE OF THE DIRECTOR				
23	Timothy Ryan	Spec. Asst.	GM-301-15	Dir., EX-3
58	Janet Gibbons	Spec. Asst.	GS-301-11	Dir., EX-3
59	Brunetta Centner	Sec. (Typing)	GS-318-9	Dir., EX-3
29	Suzanne Gibson	Staff Asst.	GM-301-13	Dir., EX-3
30	Antonio Benedi	Staff Asst.	GS-301-9	Dir., EX-3
31	Ann W. Lack	Spec. Asst.	GS-301-13	Dir., EX-3
34	Mark Levin	Spec. Asst.	GM-301-14	Dir., EX-3
68	DeWitt Copp	Spec. Asst.	GM-301-15	Dir., EX-3
OFFICE OF THE DEPUTY DIRECTOR				
48	Marion Cernansky	Spec. Asst.	GM-301-14	Dep. Dir., EX-4
54	Sharon Goldstein	Staff Asst.	GS-301-11	Dep. Dir., EX-4
OFFICE OF LEGISLATIVE AND GOVERNMENTAL AFFAIRS				
69	Donald Thorson	Asst. Dir., OLGA	GM-301-15	Dir., EX-3
61	John Fonte	Legislative Officer	GM-301-14	Asst. Dir., GS-14
40	Art Love	Dep. Asst. Dir., OLGA	GM-301-14	Asst. Dir., GS-15
OFFICE OF POLICY AND PLANNING				
41	Richard English	Dep. Asst. Dir.	GM-301-15	Asst. Dir., ES-1
67	Catherine Barr	Spec. Asst.	GS-301-13	Asst. Dir., ES-1

Prepared by Classification Branch
October 27, 1982

OFFICE OF COMMUNICATIONS				
45	Theresa Landolt	Public Info. Officer	GM-301-15	Dir., EX-3
71	Susan Collins	Staff Asst.	GS-301-9	Comm. Dir., GS-1035-15
OFFICE OF DOMESTIC OPERATIONS				
32	Kay Wilson	Staff Asst.	GS-301-11	Assoc. Dir., EX-5
44	Dixie Cassell	Spec. Asst.	GS-301-13	Dep. Assoc. Dir., VISTA, ES-1
63	Barbara Wyatt	Young Vol. Prog. Off.	GM-301-15	Dep. Assoc. Dir., VISTA, ES-1
60	Wade Freeman	Spec. Asst.	GM-301-14	Dep. Assoc. Dir. OAVP., ES-1
OFFICE OF VOLUNTEER LIAISON				
51	Barbara Baroody	Spec. Asst.	GS-301-14	Asst. Dir., EX-5
43	James B. Williams	Spec. Asst.	GS-301-14	Asst. Dir., EX-5
62	Yvonne Roderick	Spec. Asst.	GS-301-13	Asst. Dir., EX-5
66	Daniel Bonner	Spec. Asst.	GM-301-14	Asst. Dir., EX-5
71	Kathleen Stockdale	Spec. Asst.	GS-301-13	Dep. Asst. Dir., ES-1
REGIONAL DIRECTORS (all same P.D.'s)				
	Herbert Stupp	Region II	GM-301-15	Assoc. Dir., EX-5
	Eugene Pasymowski	Region III	GM-301-15	Assoc. Dir., EX-5
	Robert Winston	Region IV	GM-301-15	Assoc. Dir., EX-5
	Alan Drazek	Region V	GM-301-15	Assoc. Dir., EX-5
	Paulette Standefer	Region VI	GM-301-15	Assoc. Dir., EX-5
	Naomi Bradford	Region VIII	GM-301-15	Assoc. Dir., EX-5
	Susan Borchard	Region IX	GM-301-15	Assoc. Dir., EX-5

RE: Questions 3 & 5

July 14, 1982

ANALYSIS OF THE NEW YORK OFFICE OF
MENTAL RETARDATION AND DEVELOPMENTAL
DISABILITIES (OMRDD) FGP GRANT

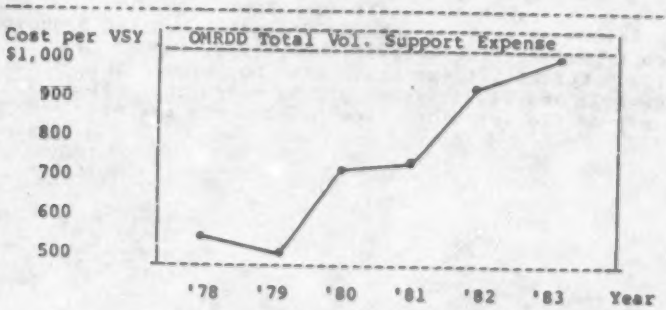
The following analysis has been compiled to review comparative costs of the OMRDD FGP project grant and other New York FGP projects. For further comparison the projects in Michigan and Pennsylvania have been included. The state of Michigan was included because its State Department of Mental Health/Mental Retardation (DMH/MR) has implemented the de-institutionalization of residents and the decentralization of the patient care function over the past decade. The FGP projects working with the State DMH/MR serve primarily a community based population as in New York, and receive large amounts of state support. The state of Pennsylvania was included because a statewide FGP grant with the Department of Public Welfare (serving mentally retarded) was converted into smaller community-based projects in 1980. ACTION's Pennsylvania State Office reports that the current projects are more focused, responsive to community and volunteer needs, easier to monitor, and have fewer problems than the statewide grant.

As shown in the following charts, the OMRDD project has the highest volunteer support cost per volunteer service year (VSY) funded in all three states compared. Further, these costs have doubled in the OMRDD grants between 1978 and 1983. It should be noted that all computations are based on figures taken from NGA budgets rather than from FSR's.

Volunteer Support Cost Trend for OMRDD 1978 - 1983

YEAR	TOTAL SUPPORT COST	#VSYs	GRANT #	AMEND
4/1/77 - 3/31/78	$290,415	534	439-2115/6	#15
4/1/78 - 6/30/79* 15 months	$341,888 (annualized)= $273,510	534	439-2115/7	#22
7/1/79 - 3/31/80* 9 months	$286,293 (annualized)= $381,724	530	439-2016/1	# 3
4/1/80 - 3/31/81	$384,523	530	439-2016/2	# 6
4/1/81 - 3/31/82	$493,378	530	439-2016/3	#10
*4/1/82 - 11/30/82 8 months	$384,348 (annualized)= $576,493	530	439-2016/4	#11

Total Volunteer Support Cost Per VSY	
1978	$543
1979	$512
1980	$720
1981	$725
1982	$930
1983	$1,087



Comparison of Volunteer Support Costs in New York FGP Projects

NGA/Date	City	VSY	Support Costs per/VSY
439-2016/4 6/11/82	Albany	530	$1,087 (annualized)
339-2027/1 9/24/81	Babylon	60	$ 751
439-2019-3 12/31/81	Binghamton	58	$ 730
339-2021/3 9/24/81	Bronx	100	$ 570
339-2017/3 9/16/81	Elmsford	141	$ 339
339-2020/3 8/11/81	Hempstead	115	$ 543
439-2009/4 9/2/81	New York	161	$ 654
339-2010/4 6/10/82	Niagara	62	$ 690
339-2023/2 12/11/81	Pomona	63	$ 517
339-2004/5 4/28/82	Rochester	67	$ 693
339-2018/4 1/29/82	Syracuse	74	$ 767
339-2026/1 9/1/81	Troy	71	$ 510

COMPARISON of VOLUNTEER SUPORT COSTS
In
PENNSYLVANIA FGP PROJECTS

NGA/Date	City	VSY	Support Costs/per VSY
339-3266/3 3/25/82	Altoona	50	$684
439-3265/3 4/21/82	Ebensburg*	60	$665
339-3270/3 5/10/82	Erie	60	$756
439-3285/1 12/30/81	Media	70	$492
439-3264/3 2/10/82	Middleburg*	80	$751
339-3254/7 1/29/82	Norristown	58	$577
439-3284/1 12/17/81	Philadelphia	92	$820
339-3263/4 6/8/82	Pittsburgh	175	$627
439-3269/2 2/16/82	Reading*	50	$681
439-3276/2 6/24/82	Wilkes-Barre	74	$668

*FGP grants developed from the statewide grant.

At the close of the Department of Public Welfare statewide grant in 1980 the average cost per volunteer service year (VSY) was $866. The first year grants for the smaller community based projects that resulted from the conversion were; Altoona $566, Ebensburg $430, Middleburg $633, Reading $602. The average cost per VSY for all four projects was $562, a net reduction of $304 per VSY.

Comparison of Volunteer Support Cost
in
Michigan Federally Funded FGP Projects

NGA/Date	City	VSY	Support Costs/per VSY
339-5263/7 5/20/82	Alpena	67	$746
339-5272/4 5/6/82	Coldwater	62	$669
339-5291/2 8/19/81	Detroit	259	$768
339-5293/3 5/20/82	Farmington	67	$857
339-5268-5 8/19/81	Grand Rapids	65	$672
339-5307/1 3/31/82	Howell	59	$745
339-5276/4 6/1/82	Muskegon	76	$538
339-5301/1 12/18/81	Port Huron	46	$724
439-5270/4 11/9/81	Ypsilanti	71	$888

(Projects without federal funding have not been included)

Potential Benefits of Conversion to Smaller Community-based Projects

Community sponsorship/control should result in increased accountability to the local community through less bureaucratic levels of responsibility, better communication, tighter management span of control and increased opportunity for community input in decision making. Increased community participation through an enhanced role in Advisory Council recommendations, increased local in-kind and financial support, and greater local visibility should produce local projects that are reflective of community needs and priorities. More timely (more than has been the experience with OMRDD by the state system) dispersal of stipend and transportation reimbursements will certainly be of major importance to the volunteers.

Reductions in administrative costs result from lower salary scales associated with private non-profit and local public agencies, and higher volunteer to staff ratios. Savings may also accrue with the elimination of some staff travel and state-wide Advisory Council meetings. In addition shifting of certain project responsibilities (eg. recruitment payroll, etc.) from OMRDD personnel to local project staff should result in freeing up OMRDD personnel time to devote to other non-FGP activities, or an overall reduction of personnel in OMRDD.

Currently, OMRDD serves as sponsor and volunteer station. This situation leads to overlapping of roles and potential conflict of interest. Overall, OMRDD will be able to extricate itself from day to day operations and appropriately assume an oversight function regarding services to its target population of the developmentally disabled.

The problems previously described and discussed with OMRDD officials and the benefits to be accrued have moved ACTION to develop a plan which would alter the administrative structure of of the OMRDD FGP/SCP project. The OMRDD project would be divided into smaller more manageable projects and would be awarded to community-based agencies around the state. The process would occur in two phases.

Phase I

- Evaluate existing FGP/SCP sponsors in the state of New York to determine suitability for grant augmentation. Evaluation will include; administrative cost, cost per volunteer, any previous problems, grant/budget management history, and any other pertinent information.

- Survey existing FGP/SCP sponsors to determine the number of volunteers that they could effectively accommodate with; (1) No additional administrative money or (2) with a minimum of additional administrative money.

- Determine where existing FGP/SCP projects and the OMRDD projects are in proximity to allow the existing projects to assimilate the OMRDD volunteers and volunteer stations.

- Award grant augmentations to existing projects that can effectively manage the augmentation, meet the ORMDD-ACTION criteria, and are willing to take on existing FGP/SCP volunteers, clients, and volunteer stations.

A review of project locations indicates that not all volunteers can be assimilated by existing sponsors (non-OMRDD). Further, based on Phase I assessments some existing sponsors may not be appropriate for augmentation. This would require development of new sponsors in local communities.

Phase II

A Request for Proposal (RFP) would be developed by ACTION and OMRDD. The RFP would include all the information that a prospective sponsor would require in developing an FGP/SCP proposal. A program description, budget and volunteer service year data, handbooks, grant applications, program guidance and emphasis, and who to contact for technical assistance in preparing the grant would be included. The RFP package would be sent to agencies in areas where we (ACTION/OMRDD) have determined the need to establish a new sponsor. Time permitting we would also schedule a meeting in each locale to stimulate interest, answer questions, and provide any needed technical assistance.

A joint review of proposals submitted for funding would be accomplished by ACTION and OMRDD personnel. ACTION and OMRDD will also need to develop strategies and agreements for joint funding and monitoring of projects. ACTION will provide a Notice of Grant Award to the new sponsors before 12/1/82. OMRDD will need to complete the Memoranda of Understanding and contractual agreements prior to 12-1-82.

ACTION has for many years worked cooperatively with states in the funding of Older American Volunteer Projects (OAVP). More than thirty states provide over sixteen million dollars to projects around the country. One state, Michigan, currently provides almost 2 million dollars to augment the ACTION funds utilized for Foster Grandparents. Michigan has been quite successful in developing the FGP Program. There are several elements in the Michigan projects that we may want to replicate in New York.

In Michigan when state funds were first available, the decision was made to fund local non-profit organizations to operate the projects. The Office on Services to the Aging felt that it was best suited for planning and monitoring the Foster Grandparent Program, not actual day-to-day project management. In the recent years the State Department of Mental Health has supplemented the OSA funds with $500,000 of DMH discretionary funds. They too have opted to utilize existing local sponsors rather than operating the projects themselves. The key elements to this approach include:

1. A letter of agreement between the ACTION State office and the Michigan OSA.

2. That both ACTION and the State agree on service areas, sponsors, and volunteer stations for jointly funded projects.

3. The sponsor develops one proposal which is accepted by both funding sources and receives a separate Notice of Grant Award from both ACTION and the State.

4. The state has developed program guidelines consistent with federal guidelines.

5. Monitoring of jointly funded projects is usually accomplished with both ACTION and the state OSA staff person present.

6. Good communication is essential.

The Foster Grandparent and Senior Companion Projects in New York are well suited to the Michigan model. Further, we have already had successful experiences in converting a large statewide grant in Pennsylvania to more manageable and efficient locally operated projects. We can be both encouraged and optimistic with the prospect of jointly funding locally operated, community responsive, cost efficient projects that serve the low-income elderly and developmentally disabled children and adults in New York.

POSITION DESCRIPTION (Please Read Instructions on the Back)

1. Agency Position No. AC-ES-0005

2. Reason for Submission: [ ] Redescription [ ] Reestablishment [ ] New [X] Dept'l [ ] Field [X] Other
Explanation (Show any positions replaced)
Recertification

3. Service

4. Employing Location: Washington, D.C.

5. Duty Station: Washington, D.C.

6. CSC Certification No.

7. Fair Labor Standards Act: [X] Exempt [ ] Nonexempt

8. Employment/Financial Bond Required: [X] Yes [ ] No

9. Subject to IA Action: [ ] Yes [X] No

10. Position Status: [ ] Competitive [X] Excepted (Specify) Non-Career SES

11. Position is: [ ] Supervisory [5] Managerial [ ] Neither

12. Sensitivity: [ ] Critical [ ] Noncritical [ ] Nonsensitive

13. Competitive Level Code: OC/1

14. Agency Use: ~~UC-2~~ 8668

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. Civil Service Commission						
b. Department, Agency, or Establishment	Deputy Associate Director for Older Americans Programs	ES	301		PAK	4/6/81
c. Bureau						
d. Field Office						
e. Recommended by Supervisor or Initiating Office						

16. Organizational Title of Position (if different from official title)

17. Name of Employee (if vacancy, specify): Betty H. Brake

18. Department, Agency, or Establishment: ACTION

a. First Subdivision: Office of Domestic and Anti-Poverty Operations

b. Second Subdivision: Office of Older Americans Volunteer Programs

c. Third Subdivision

d. Fourth Subdivision

e. Fifth Subdivision

19. Employee Review. This is an accurate description of the major duties and responsibilities of my position.
Signature of Employee (optional)

20. Supervisory Certification. I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

a. Typed Name and Title of Immediate Supervisor
William Hoing, Acting Director, DO
Signature / Date

b. Typed Name and Title of Higher-Level Supervisor or Manager (optional)
Dana Rodgers, Acting Director, D
Signature: Robert S. Stamm for / Date: 4-3-81

21. Classification/Job Grading Certification. I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the Civil Service Commission or, if no published standards apply directly, consistently with the most applicable published standards.
Typed Name and Title of Official Taking Action
Anastasia Johnson
Chief, Position Classification Branch
Signature: Anastasia Johnson / Date: 4-6-81

22. Standards Used in Classifying/Grading Position

Information for Employees. The standards and information on their application are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the Civil Service Commission. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the Commission.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)										
b. Supervisor										
c. Classifier										

24. Remarks

25. Description of Major Duties and Responsibilities (See attached)

5000-106

GPO : 1977 O - 231-530 (305)

Optional Form 8 (Revised 8-77)
U.S. Civil Service Commission, FPM Chap. 295

BEST COPY AVAILABLE

Optional Form 8
July 1966
U.S. CIVIL SERVICE COMMISSION
FPM Ch. 296
8335-134

POSITION DESCRIPTION

1. Chge.
Dept'l Ut. | Washington, D
2. If submission:
(a) ...osition replaces another (i.e., a change of duties in an existing position), identify such position by title, classification (service, series, grade), and position number
QT-1616, GS-301-16, dated 2/24/76
(b) Other (specify)
3. Agency position No.
~~7-433~~ AC-ES-0005
4. C. S. C. certification No.
QT-1616
5. Date of certification
SEP 21 1977
6. Date received from C. S. C.

CLASSIFICATION ACTION

ALLOCATION BY	CLASS TITLE OF POSITION	CLASS: Service	Series	Grade	INITIALS	DATE
a. Civil Service Commission	Deputy Associate Director for Older Americans Programs	GS	301	16	CSC	
b. Department, agency, or establishment	Deputy Associate Director for Older Americans Programs	GS	301	16	ACTION	9-13-77
c. Bureau						
d. Field office						
e. Recommended by initiating office						

7. Organizational title of position (if any)

10. Name of employee (If vacancy, specify 1st, 2d, 3d, or 4th)

11. Department, agency, or establishment
ACTION

a. First subdivision Office of Domestic and Anti-Poverty Operations

b. Second subdivision Office of Older Americans Volunteer Programs

c. Third subdivision

d. Fourth subdivision

e. Fifth subdivision

12. This is a complete and accurate description of the duties and responsibilities of this position

(Signature of employee) (Date)

(Signature of immediate supervisor) (Date)
Title: Associate Director for Domestic and Anti-Poverty Operations

14. Certification by head of bureau, division, field office, or designated representative
Dan Brown 9/9/77
(Signature) (Date)
Title: Director of ACTION

15. Certification by department, agency, or establishment
Sylvia E. Bourneuf 9-13-77
ACTING (Signature) (Date)
Title: Director of Personnel

16. Description of duties and responsibilities

Expanded certification in lieu 13 for all positions being established, amended, and re-described:

I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out government functions for which I am responsible. This certification is made with knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

(Signature of Immediate Supervisor)
Associate Director for Domestic and Anti-Poverty Operations

Exempt UC 2

3040.
Agency Position Code
Executive Level Code
Professional or Support
Occupational Class. Code

If more space is required, use the other side and additional pages (see 8 a (3)).

GPO 854—O-722-797

BEST COPY AVAILABLE

Deputy Associate Director for
Older Americans Volunteer Programs

GS-301-16

I. INTRODUCTION

This position is located in the Office of Domestic and Anti-Poverty Operations, ACTION. The incumbent serves as Deputy and principal advisor to the Associate Director for Domestic and Anti-Poverty Operations on Older Americans Volunteer Programs (OAVP), with responsibility for influencing the development of and being a principal spokesman for ACTION policy as it relates to Older Americans. He is responsible for planning, developing, formulating, promulgating, and implementing national policies, procedures, and programs to broaden and expand existing OAVP programs and create new and innovative OAVP programs and projects. He established goals for and provides program direction to OAVP staff and volunteers; allocates program resources; approves OAVP projects; and coordinates program related communications. The programs include the following:

Foster Grandparent Program (FGP)

Foster Grandparent Program is a grant program designed to provide part-time opportunities with stipend for low-income persons age 60 and over, to give person-to-person service to children having special or exceptional needs. There are over 180 FGP projects in 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia, through which over 16,000 Foster Grandparents service over 32,000 children on any given day in health, education, welfare, and related settings.

The major goals of the program are to demonstrate the availability and capacity of retired persons for dependable, productive service to society and to establish a useful way for older adults to contribute to their community in their retired years. Institutional settings where children are provided Foster Grandparent care include: institutions for the mentally retarded; pediatric wards in hospitals; institutions for dependent and neglected children; institutions for emotionally disturbed children; classrooms, e.g., day care, schools, Head Start; and proprietary health care facilities.

Retired Senior Volunteer Program (RSVP)

Retired Senior Volunteer Program (RSVP) is a grant program which offers many of America's men and women, aged 60 and

over, new and varied opportunities for volunteer service to their communities. RSVP grants to community groups provide funding for staffing and organizing an uncompensated volunteer service program by Older Americans in a wide variety of settings. It is intended that grants be terminated after five years and that projects be locally supported. There are now over 675 RSVP projects with approximately 220,000 volunteers.

Senior Companion Program

The Senior Companion Program is a relatively new grant program designed to provide part-time opportunities with stipend for low income persons, age 60 and over, to give person-to-person service to adults, especially older adults, having developmental disabilities or special needs for companionship. Senior Companions attend older persons receiving institutional care in hospitals, nursing homes, and homes for the aged as well as those living in their own homes who may need special personalized assistance. In FY-77, $3.8 million funded 46 projects which supported 2800 Senior Companions.

II. MAJOR DUTIES AND RESPONSIBILITIES

The incumbent is responsible for planning and developing nation-wide Older Americans Volunteer Programs for ACTION, including evaluating, modifying, and expanding existing OAVP programs and developing and implementing new and innovative programs designed to broaden and expand opportunities for volunteers and volunteer service in Older Americans Volunteer Programs and related areas throughout the nation.

Establishes and promulgates policy, procedures, goals and objectives for the effective implementation and operation of a nation-wide Older Americans Program.

Enjoys the complete confidence of and is principal policy advisor to the Associate Director on matters pertaining to OAVP programs; acts for him in approving projects, allocating program resources, interpreting policy and procedures, and providing technical program guidance and direction to the Regional Directors and senior regional staff.

Represents and speaks for the Associate Director in interface and continual dialogue with a wide variety of officials and leaders of Federal agencies, state and local governments, the Congress, private organizations, and Older Americans interest groups throughout the country. Directs efforts toward assuring broadest possible understanding and acceptance of ACTION policies and programs; generally exchanges information with and promotes Older Americans Programs with these groups. Represents the Associate Director and ACTION on

matters pertaining to Older Americans Volunteer Programs through public speeches; contact with the media; and participation in workshops, conferences, task forces, meetings, conventions, etc. Serves on important national committees concerned with the interests and problems of Older Americans as ACTION's representative.

Is responsible for coordinating all OAVP activities with other domestic and international volunteer programs in ACTION, other Federal agencies, state and local governments, and private groups and individuals.

Works closely with the Office of Recruitment and the Public Affairs Office in developing a broad range of materials for use in providing publicity for Older Americans Volunteer Programs to inform the general public and prospective communities of OAVP services available.

Directly supervises and coordinates the efforts of a staff of approximately 18 persons, including two Division Chiefs and a Deputy Director, in grades ranging up to GS-15.

III. SUPERVISION AND GUIDANCE RECEIVED

Performs under the broad general guidance of the Associate Director for Domestic and Anti-Poverty Operations, a Presidential Appointee, Executive Pay Level V. The incumbent independently exercises initiative, resourcefulness, and leadership and is given wide latitude in directing the Older Americans Volunteer Programs. Work is reviewed in terms of overall accomplishment of the broad program objectives for Older Americans Volunteer Programs.

Senator NICKLES. Thank you very much.

Mrs. BRAKE. Thank you.

Senator NICKLES. Nothing else coming before the committee, we will stand adjourned.

[Whereupon, at 10 a.m., the committee recessed, to reconvene at the call of the Chair.]

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